



## Appeal Decision

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by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 08.02.2024

Appeal reference: CAS-02100-M4J0N0

Site address: Land to the rear of 235 & 237 Peniel Green Road, Peniel Green, Swansea SA7 9BA

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- 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 Darran Goulding against an enforcement notice issued by the City and County of Swansea Council.
  - The enforcement notice, numbered ENF2018/0121, was issued on 7 July 2022.
  - The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land to a builder's yard, the siting of two portable buildings and the importation of waste building materials to re-profile the land and increase land level.
  - The requirements of the notice are to:
    1. Cease the use of the land as a builder's yard and the importation of waste materials.
    2. Remove the portable buildings and all materials associated with the business from the land.
    3. Remove all the tipped material deposited on the site, reduce the level of the land by 1m, and restore the land to its previous condition.
  - The periods for compliance with the requirements are:
    1. On day in relation to the use of the land and importation of waste materials described in 5(1) above.
    2. One month in relation to the removal of the portable buildings and building materials described in 5(2) above.
    3. Two months in relation to the removal of waste deposited and reduction in land level described in 5(3) above.
  - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
  - A site visit was made on 30 January 2024.
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## **Decision**

1. I direct that the enforcement notice be varied by:
  - a) The deletion of requirement 5(3) of the notice and the insertion of the following:  
“Restore the land to its condition before the breach took place”.
  - b) The substitution of “two months” for “6 months” in paragraph 6(3) of the notice as the period for compliance.
2. Subject to these variations, the enforcement notice is upheld.

## **Procedural Matter**

3. The procedure for this appeal changed from inquiry to written representation and the parties were informed of this decision.

## **The site**

4. The appeal site relates to a rectangular area of land to the rear of Nos. 235 and 237 Peniel Green Road. Nos. 235 and 237 are mid and end terrace properties. The appeal land is one area with no dividing enclosure between the plots. There are enclosures on either side boundary. A fence surrounds the rear garden of No. 237 adjoining the appeal site, but there is presently no fence between the rear of No. 235 and the appeal site. There is unhindered access onto the appeal site from No. 235. The northern boundary and the access to the site is off Gwernllwynchwyth Road.

## **The ground (b) appeal**

5. The ground of appeal is that what is alleged by the enforcement notice (EN) has not in fact happened. The appellant claims that the use of the land as a builder’s yard has not occurred as this has been garden land and domestic storage associated with renovation works to No. 235. The appellant asserts that the land levels had not been raised. The land had been raised by the previous occupants. Thirdly, the siting of portable buildings on the land was permitted development which is a case put forward in support of ground (c).
6. The question on a ground (b) is whether the breach had occurred by the date of issue of the EN. The onus of proof in a ground (b) appeal is on the appellant and the burden of proof is the balance of probability.
7. The allegation is framed as a single purpose use of the site. The EN is a material change of use notice and refers to portable buildings facilitated by the alleged use. These are regarded by the Council as a use of land rather than the erection of buildings.
8. Having inspected the site, I would concur that the portable buildings are not buildings having regard to the tests of what comprises a ‘building’. These being that it is of a size to be constructed on site as opposed to being brought onto the land, permanence, and physical attachment. No case has been made in the evidence presented that they comprise ‘buildings’ having regard to these factors.

### *Builder’s yard*

9. The appellant moved to No. 235 in 2016. Both parcels to the rear of Nos. 235 and 237 are owned by the appellant. The Council has defined the area of the EN on the plan accompanying the notice. The area excludes the properties identified and an area of garden to the rear.
10. The Council notes that the EN plan area was physically separate from the rear gardens of Nos. 235 and 237 shown by fences built across both plots. These appear on the

Council's photographs of the site in 2018 and the street view image in May 2022. The fence across the rear of Nos. 235 and 237 appears on the satellite image dated 2009 supplied by the appellant. It is present on the 2013, 2016, 2018 and 2020 satellite images.

11. Based on the available evidence and on the balance of probability the EN site was physically separate from Nos. 235 and 237 when the notice was issued. Whilst the fence to the rear of No. 235 was not there when the site visit was conducted that matter is not conclusive in relation to the issue of physical separation when the EN was issued.
12. In terms of functional use, the appellant asserts the land was used as garden associated with the properties. However, the Council's photographic evidence of the site shows a considerable volume of building material, tyre storage, plant, trailer, and mini digger as well as remnants of tiles stored across the site. There was construction site fencing, boards, and some insulating sheets, and evidence that the ground had been compacted with various building materials with sand and cement mix. This evidence is corroborated by the appellant's satellite imagery in 2016, 2018, and 2020 where the EN site had been predominantly covered by building material and spoil.
13. However, the evidence points to a significant difference in the character of activities undertaken on the site from what has gone on previously. The functional use of the site has been significantly altered to that of a builder's yard. The significant change in the definable character of the site took place in probability sometime in 2016 when the appellant moved into No. 235.
14. From my inspection of the portable buildings, one was filled to the brim with various building materials, generator, tools, and insulation sheets.
15. The other portable building had office equipment, storage cabinets and a motorbike. Whilst this portable building may possibly contain domestic items the physical and functional use of the land on which the storage is placed on, as a matter of fact and degree, is not residential garden land, but that as alleged in the EN. In any event, the appellant has not provided evidence to indicate that the items stored or used as an office was not associated with the building trade to which the appellant was conducting at the time the EN was issued.
16. The significant difference in the character and activity of the land as a matter of fact and degree comprises a use which goes beyond that associated with domestic storage or in connection with storage linked to renovations of a domestic property.
17. The appellant has not demonstrated on the balance of probability that the EN description of the allegation has not occurred. The area defined in the EN has been formulated correctly. As a matter of fact, and degree, there has been a material change of use of the land to a builder's yard.

*Importation of waste materials to re-profile the land and increasing land levels*

18. The Council's photographic evidence show that the appeal land had been excavated to construct a swimming pool and this was subsequently filled in. However, it is evident from the site visit that tyres have been used to fill the remainder of the excavation works. The photographic evidence also shows areas of the site that have been compacted by various building materials as described above and this is corroborated by three satellite images. Areas of the appeal land have been raised to some extent, but not in the area adjoining the access since this appears the same from the photographic evidence as it appears now.
19. The EN allegation describes correctly what has occurred. I note the appellant's claim that the previous owner had increased land levels in between 2003 and 2006, however, the

activity in 2016 onwards shows a definable change in the condition of the land which supplanted any form of previous increase in land levels on the site.

*Portable buildings*

20. The appellant's evidence shows that the portable buildings were brought onto the land to facilitate storage. These are placed where the alleged material change of use of the land to a builder's yard has occurred and are used as described.

*Conclusion on the ground (b) appeal*

21. The breach of planning control as alleged in the EN has occurred as a matter of fact and degree and the ground (b) appeal therefore fails.

**The ground (c) appeal**

22. The ground (c) appeal is that the matters alleged in the EN do not constitute a breach of planning control. The appellant's contention is that the portable buildings replaced two garages and are permitted development. The former garages were demolished although the remnants of one is left standing (the front and rear wall in situ with the side walls having been removed).

23. I have considered the portable buildings above as chattels being a use of land rather than buildings. As I have indicated the alleged use of a builder's yard has occurred, and that the portable buildings are placed on this land and used as such in connection with the builder's yard use. They are regarded as ancillary chattels that facilitate the builder's yard use.

24. As they are not buildings no permitted development right exists and no planning permission has been granted for them. The breach of planning control as alleged is development under section 55(1) of the Act as amended. Planning permission is required for the carrying out of any development of the land under section 57 of the Act as amended.

25. The appeal on ground (c) therefore fails.

**The ground (d) appeal**

26. This ground is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control. In the case of a material change of use, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach under section 171B(3) of the Act as amended. The material date in this case is 7 July 2012.

27. The appellant's case is that the build-up of material on the site took place between 2003 and 2006 in one area behind the garage of No. 237. This was prior to the appellant's involvement on the site. The appellant moved to No. 235 in 2016 and the evidence in the form of satellite images points to a definable change in the character and condition of the appeal site from 2016 onwards. This is less than the requisite period of 10 years. The EN was issued in time against the primary use of the site as a builder's yard.

28. The change in land levels which may have taken place in 2003 to 2006 as described in the ground (b) was supplanted by the works undertaken on the site when the breach as alleged occurred. Furthermore, the change in land levels and the importation of materials were works that facilitated the alleged builder's yard use and were ancillary to it. The builder's yard use is therefore not immune through the passage of time.

29. The ground (d) appeal therefore fails. Enforcement action has been taken in time in respect of the breach of planning control.

### **The ground (f) appeal**

30. The ground of appeal is that the steps required in the notice to be taken, exceed what is necessary to remedy any breach of planning control or, to remedy any injury to amenity which has been caused by any such breach.
31. The appellant's case relates to the issue of the ground levels being increased across the site and that a reduction of 1 metre is excessive given the natural fall of ground levels on the site and surrounding area.
32. Having regard to the requirements of the notice it appears that the purpose of the notice is to remedy the breach of planning control, by discontinuing any use of the land and by requiring the removal of all the tipped material deposited on the site, to reduce the level of the land by 1 metre, and to restore the land to its previous condition. The purpose of the notice would appear to fall within section 173(4)(a) of the Act as amended.
33. The appellant cannot be required to undertake works that would go beyond remedying the breach of planning control. From my conclusions on the ground (b) appeal it is evident that the ground levels have been altered on the site and that the breach as alleged has occurred. It is evident from the Council's photographs that there has been importation of waste building materials, re-profiling of the land and an increase in land levels on areas of the site, but not across the whole site as asserted in the notice.
34. Near the area of fill where the swimming pool had been part constructed but subsequently filled in by spoil, the natural level of the ground next to the fence to the rear of No. 237 has not been disturbed. The level of ground where the fill has taken place is comparable to this level next to the fence in question. I also note the appellant's point in relation to the foliage on the retaining wall abutting this area. A reduction of 1 metre at this juncture would undermine and bring the ground level down to the footings of the wall. It seems improbable that the lie of the land would have been as low as this, and the requirement is therefore excessive.
35. Furthermore, the level of the land adjoining the access has not changed, where the remnant of the former garage is still standing. To require a reduction here of 1 metre would be excessive and would go beyond remedial works as required by section 173(4)(a) of the Act as amended.
36. I therefore consider that the appeal on ground (f) to this limited extent succeeds. The most that can be achieved and that which is proportionate is to restore the land to its previous condition before the breach took place. The landowner is best placed to know what that previous condition was, but it would require the restoration of the land to the extent of removing the imported waste building materials from the land as this was not the condition of the land, based on the available evidence, prior to the breach taking place.
37. The appellant's submission on ground (f) is also that the situation would be resolved by the grant of planning permission on the site for a single detached dwelling, which to date has not been granted. This would resolve the issue of the notice and the notice would cease to have effect under section 180 of the Act as amended. However, planning permission has not been granted for the development sought.
38. The appellant does not state that the requirements of the notice in respect of the builder's yard and the portable buildings are excessive. I consider that the requirements of the notice on this part is not excessive and does no more than remedy the breach of planning control.
39. To the limited extent, I have outlined above the appeal on ground (f) succeeds. I shall vary the requirement accordingly.

### **The ground (g) appeal**

40. The ground of appeal is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
41. The EN time for compliance is in three stages. The first requires that the use ceases and the importation of waste materials stops in one day. No case has been made to indicate that this is too short a period to comply with, since all that must be done is to stop using the site for the alleged use.
42. The second requires that the portable buildings and all materials associated with the business use is removed from the site in one month. No evidence has been presented by the appellant that this is not achievable.
43. In both these matters the time given for compliance with the notice is proportionate after considering the conflicting matters of the public interest to require a timely end to the breach of planning control and the private interests of the appellant.
44. The third requirement is varied because it is allowed under the ground (f) appeal. The time for compliance in the EN is two months. There is evidence presented that the appellant has sought to obtain planning permission to develop this land and is in the process of revising the submission before re-submitting. To require the appellant more time to ensure that the site is cleared of imported material is proportionate since this would be a considerable undertaking and one which will be affected by the level changes of the site should planning permission be granted for the development. For the planning application to be resolved the minimum period proportionate to undertake these works would be six months.
45. To this limited extent, the ground (g) appeal succeeds. I shall vary the EN accordingly.

### **Conclusions**

46. For the reasons given above, I conclude that the grounds (b), (c) and (d) should fail. Grounds (f) and (g) succeed to the limited extent I have outlined.
47. Subject to these variations, the enforcement notice is upheld.

*Iwan Lloyd*

INSPECTOR