



Appeal Decision

Site visit made on 18 July 2023

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Appeal Ref: APP/W1145/C/22/3309901

Land at Peters Marland, AKA 'The Yard', Torrington, Devon, EX38 8QH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr David Pearson against an enforcement notice issued by Torridge District Council.
- The notice was issued on 29 September 2022.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last four years, operational development comprising the construction and use of a dwellinghouse in the approximate position marked as "1" on the attached plan and shown in Appendix B.
- The requirements of the notice are to:
 - (i) Cease any residential use of the land
 - (ii) Demolish the dwelling house shown in Appendix B attached to this notice and marked as "1" on the attached Plan and remove all debris arising from its demolition from the land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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.

Summary of Decision: The appeal is dismissed, and the Enforcement Notice is upheld with correction and variation as set out in the Formal Decision below.

Procedural matters

1. The Council made an application for an award of costs against Mr Pearson. That application is the subject of a separate Decision Letter of even date.
2. The front page of the Enforcement Notice carries the heading "Operational Development and Material Change of Use", but the alleged breach of planning control is described as "operational development *comprising* [my emphasis] the construction and use of a dwellinghouse." It is important to be clear that operational development does not *comprise* a material change of use: these are two separate and distinct forms of development, as set out in s.55 of the 1990 Act. The distinction is important because it is carried through into other parts of the Act, such as s.171B, which imposes different time limits for enforcement action against operational development (four years) and material changes of use (in most cases with one important exception, ten years).
3. It is perfectly acceptable for the same Notice to attack both a material change of use *and* operational development, if they relate to connected matters, and it is clear that that is what was intended here. I am satisfied that correcting paragraph 3 of the Notice to make this more readily apparent will not cause

any injustice to either party: the Appellant has understood what it is he is said to have done wrong, and the case made by his legal representative is based on a well-informed understanding of the applicable time limits for enforcement action in this case.

The appeal on ground (d)

4. The ground of appeal is that at the date when the Notice was issued, no enforcement action could be taken in respect of the alleged breach of planning control. The Appellant's agent contends that there has been no material change in the use of the land, since it has been residential since before the modern planning system even existed, and the dwellinghouse was completed in 2015.
5. It is fair to say that when the Appeal Site formed part of the garden of Chudleigh Cottage, it is likely to have been used for purposes associated with the residential occupation of that dwelling. In other words, the cottage and its garden originally formed a single planning unit, the primary use of which was residential. However, in 2003 Chudleigh Cottage and the remainder of its garden was sold into separate ownership to the Appeal Site. This involved the functional and physical separation of the two parcels of land; each had its own entrance, with no connection between them, and the Appeal Site ceased to be part of the garden of Chudleigh Cottage.
6. At that point, then, a new chapter in the planning history of the land began. The Appeal Site became a planning unit in its own right. It was no longer part of a garden serving an existing dwelling, and so was no longer in residential use. This means that any subsequent occupation of the Appeal Site as a place of residence would have involved a material change of use, requiring an express grant of planning permission.
7. It is common ground that the Appellant does now occupy the Appeal Site as a place of residence: the dispute between the parties is as to when that use began. In order to have achieved immunity from enforcement, the residential use would need to have started at least ten years prior to the date on which the Enforcement Notice was issued, and have continued without interruption.¹ It is argued for the Appellant that he has been living at the Appeal Site since 2004, although no details or supporting information have been provided.
8. On 26 June 2014 the Council issued an Enforcement Notice² alleging the unauthorised erection of a building on the Appeal Site. An appeal against that Notice was lodged, but subsequently withdrawn. The evidence of the Council is that its Officer visited the Appeal Site on 8 April 2015, and concluded that the Notice's requirement to demolish the building had been met.
9. On 18 July 2018 the Council issued a Planning Contravention Notice (PCN), seeking information about the alleged unauthorised residential use of the Appeal Site. The Appellant's agent now contends that the Appellant was living there at that time. However, in his response to the PCN, received by the Council on 15 August 2018, the Appellant states very clearly that the use of the land was "occasional use of camping". The Appellant did not say that he was living at the Appeal Site. He advised that building materials were on the land "because we operate a business from the site", described the structure at the

¹ Per the time limits for taking enforcement action, set out at S.171B of the 1990 Act

² Ref E/13/0220/UND

top of the site as a “pergola”, and stated that “the property has been used for camping and other outdoor activities since 2003.”

10. The use of the land for occasional camping, rather than day-to-day living, is not the same thing as residential occupation and is unlikely to amount to a material change of use. Given that it is a statutory offence to knowingly or recklessly give information which is false or misleading in response to a PCN, I consider that it was entirely reasonable for the Council to have concluded that no breach of planning control had then taken place.
11. On 23 April 2020 a Council Officer visited the Appeal Site, and formed the view that the structure at the top of the site was being used as a dwelling. Following a number of unsuccessful attempts to re-visit, the Council obtained an entry warrant and effected it on 20 October 2021. The Council served another PCN on 16 February 2022, but did not receive any response.
12. Weighing all of this in the balance, I do not find sufficient evidence to support the claim that the Appellant has been living at the Appeal Site since 2004. The assertions now made by his agent that the structure at the top of the site was a completed dwelling by 2015, and that the Appellant was living in it in 2018, contradict the Appellant’s own response to the 2018 PCN. It was open to the Appellant, who is professionally advised, to submit with his appeal a Statutory Declaration explaining this contradiction, and clarifying how he has used the Appeal Site since 2004. He has not done so. Nor has he submitted any other evidence or information in support of his claim: for example statements from others with knowledge of the site, photographs, copies of relevant bills, etc.
13. Such evidence as has been provided indicates that on the balance of probabilities, between 2003 and 2018 the Appeal Site was in occasional use for camping, such that no material change to residential use had then taken place. Rather, the material change to residential use - and the works which facilitated it through the conversion of the non-residential “pergola” to a dwellinghouse - took place at some point after the 2018 PCN response was returned. Where (as here) operational development is part and parcel of an unauthorised material change of use, an enforcement notice can require its removal even if it would otherwise be immune from enforcement under the four-year time limit.
14. I conclude that the Enforcement Notice that is the subject of this appeal was issued within the ten-year period available to the Council for taking enforcement action against the unauthorised material change of use of the Appeal Site. The appeal on ground (d) therefore fails.

The appeal on ground (a)

15. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
16. Policy ST07 of the North Devon and Torridge Local Plan 2011-2031 sets out the spatial development strategy for the District’s rural area. It establishes a hierarchy for the location of development, with a list of named “Local Centres” forming the primary focus, followed by a list of named Villages in which development will be enabled to meet local needs and growth aspirations. Peters Marland is not included on this list. The third tier of the development location

hierarchy is rural settlements containing at least one prescribed service or community facility. Peters Marland does not fall within this category.

17. The fourth and final tier states "In the countryside, beyond Local Centres, Villages and Rural Settlements, development will be limited to that which is enabled to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a countryside location." The construction of the dwellinghouse on the Appeal Site has not involved the re-use of an existing rural building, and there is no apparent reason why a countryside location is necessary. Nor is there any substantial evidence that the dwelling is needed to meet an identified local economic or social need.
18. The Appellant's agent points out that the Government's *National Planning Policy Framework* (NPPF) provides strong support for making as much use as possible of previously developed land. The definition of "previously developed land", set out in the NPPF's Glossary, applies to "land which is or was occupied by a permanent structure, including the curtilage of the developed land." While the Appeal Site may once have formed part of the curtilage of Chudleigh Cottage when it was within its grounds, it is clear that it no longer does: as discussed above, since 2003 the Appeal Site has been a separate planning unit in separate ownership. The Appeal Site does not, then, constitute "previously developed land" as defined by the NPPF, and so does not benefit from the support provided by the NPPF for making use of such land.
19. The Appellant's agent also contends that the Appeal Site is not "isolated", being close to other existing houses, so would not fall foul of the NPPF's advice to avoid the development of isolated homes in the countryside. I appreciate that the dwelling on the Appeal Site is probably not "isolated" in the sense derived from case law on that particular provision of the NPPF. But the important point is that in the terms of the adopted Development Plan, it lies in open countryside outside any identified Local Centre or Village, and does not meet the requirements for development in this location. The Appellant's agent has pointed out that the Local Plan provides for a minimum of 2000 rural dwellings, but in the absence of any indication that this provision will not be met, it is not a consideration which carries any weight in favour of permitting the development here at issue.
20. I recognise that if planning permission for the dwellinghouse is refused, the Appellant stands to lose his current place of residence. This would be an interference with his right to respect for his private life and home.³ In the absence of any evidence that it would be more difficult for him than for others to find suitable alternative accommodation, this is not a factor which carries any significant weight in favour of granting planning permission, but it is an issue I will need to consider further if the Notice is upheld.
21. In conclusion, I find that the construction of a dwellinghouse on the Appeal Site is at odds with the aims of Local Plan Policy ST07, and there are no other material considerations of sufficient weight to overcome this conflict with the Development Plan. Nor are there any conditions which could be imposed to make the development acceptable in planning terms. The appeal on ground (a) fails, and the deemed application for planning permission is refused.

³ Per Article 8 of the European Convention on Human Rights, set out in Schedule 1 of the Human Rights Act 1998

The compliance period

22. As noted above, my decision to dismiss the appeal and uphold the Enforcement Notice means that the Appellant stands to lose his current home. The period specified in the Notice for residential use of the land to cease is six months. There is no indication that anyone else is living with the Appellant at the Appeal Site, and I note that he has not brought an appeal on ground (g) (that is, that the compliance period falls short of what should reasonably be allowed). Nevertheless, I am concerned that in the current housing market, six months may not provide sufficient time to look for alternative accommodation.
23. I shall therefore increase the compliance period by two months. I am satisfied that in the circumstances of this particular case, and with the extension of the compliance period to eight months, the requirements of the Enforcement Notice are proportionate when balanced against the need to uphold the planning system, including the policies of the Council's adopted Development Plan, in the wider public interest.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice with correction and variation, and refuse to grant planning permission on the application deemed to have been made under s.177(5) of the 1990 Act.

Formal Decision

25. It is directed that the Enforcement Notice is corrected by:

At paragraph 3, deleting the words "operational development comprising"

And varied by:

At paragraph 6, deleting the word "six" and replacing it with the word "eight"

Subject to this correction and variation, the appeal is dismissed, the Enforcement Notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Jessica Graham

INSPECTOR