



Appeal Decision

Site visit made on 5 February 2025

by **R Curnow MA(TCP), BSC(Hons), CMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

Appeal Ref: APP/D0840/C/23/3324517

Yardley House, Main Road, Downderry, TORPOINT, Cornwall, PL11 3JX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by M Mark Edwards of SRT (South West) Limited against an enforcement notice issued by Cornwall Council ('the Notice').
 - The notice was issued on 19 May 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of a single dwellinghouse to two residential units and the extension of the ground floor of the garage/flat building to create a separate ground floor residential unit. The approximate positions of the original dwellinghouse and garage/flat building have been outlined in blue and orange on the attached plan respectively. The approximate position of the ground floor extension is shown by a blue 'X' on the attached plan.
 - The requirements of the notice are: (1) Cease the use of the main dwelling outlined in blue on the attached plan as two separate residential units and revert it back to a single residential unit; (2) Reinstate the closed connection on the ground floor of the main dwelling as indicated on the attached floor plan; (3) Cease the residential use of the ground floor of the garage/flat building outlined in orange on the attached plan and revert it back to a residential garage; (4) Demolish and remove from the land the ground floor extension to the garage/flat building, shown in the approximate location by a blue 'X' on the attached plan; and (5) Remove from the land all materials and debris resulting from the above works and restore the land to its former condition and use before the breaches took place .
 - The period for compliance with the requirements is: 12 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a) 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.
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Decision

1. It is directed that the enforcement notice is varied by omitting the words "and revert it back to a single residential unit" in requirement (1) of section 5 of the Notice, 'What you are required to do', and the words "and revert it back to a residential garage" in that section's requirement (4).

Subject to the 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.

The Notice

2. A Notice should not state what use should be made of land, as this one does in its requirements (1) and (4). It can require the land to be restored to its former condition before a breach occurred, as the Notice does in requirement (5). Therefore, I shall vary requirements (1) and (4) by omitting those words requiring a specified use to be made of buildings on the land. This can be done without injustice to either party.

'Hidden' Ground (c)

3. The Appellant says that, at the time that it was erected, he believed that the extension to the garage "fell within permitted development rights". I take this to be a 'hidden' appeal under Ground (c), where it is claimed that a development does not constitute a breach of planning control. This is a ground where the onus falls on the Appellant to make his case on the balance of probability.
4. No evidence to substantiate his belief has been provided; therefore, the case is not made. Although the claim was made in the Appellant's Final Comments, and thus the Council did not have the opportunity to respond, in the circumstances there was no need to ask it for further comments.
5. The hidden Ground (c) appeal fails.

Ground (a) and the Deemed Application

The Appeal Site

6. Yardley House is a large, detached building, which, with a large outbuilding referred to as the flat/garage in the Notice, lies in a large plot within the small coastal settlement of Downderry. Its northern boundary is onto the main road through the village, the B3247, from which the buildings are set back behind a generous front garden. To their south is a large garden that runs to a cliff above Downderry Beach.
7. The main building has been extended that, by reason of internal doors, can be used as a single dwellinghouse or as two separate dwellinghouses. The outbuilding, which, for convenience, I shall refer to as the flat/garage in line with the Notice, accommodates two flats.

Main Issue(s)

8. The Main Issues are whether it is appropriate to provide additional dwellings on the site having regard to:
 - its location within a stretch of coastline that is subject to coastal erosion; and
 - the risk of surface water and groundwater flooding.

Reasons

Coastal location

9. The appeal site lies within an area of coastline that is subject to erosion, referred to as a Coastal Vulnerability Zone ('CVZ').
10. The property's frontage onto the beach at Downderry is formed of a cliff, estimated at 8-10m high. This is formed of Head, a loosely compacted material comprised of stones in a mud/clay matrix. It was evident at my site visit that this has eroded and fallen in the recent past.
11. The shoreline from the eastern end of Downderry to Seaton, in which the site lies, is for the most part protected through engineered sea defences. These include extensive works to the property immediately to the west of Yardley House and, across the footpath running to the beach, on the seaward frontage of 'The Inn on the Beach'. Indeed, as illustrated in Figure 2 of the Appellant's 'Coastal

Vulnerability Assessment’¹ (‘CVA’), it was at that time only one of four stretches of this shoreline to be unprotected. The Legend to Figure 2 states that one of those unprotected stretches benefits from planning approval for defence works. Though I have not been given any details of this permission, it has not been challenged by the Council, so I take it to be the case.

12. The approach to the management of whether, and how, development is allowed in the CVZ is set out in various local policy documents. Amongst its terms, Policy 26 of the Cornwall Local Plan (‘CLP’) that relates to ‘Flood risk management and climate change’ requires development proposals to be consistent with the Shoreline Management Plan (‘SMP’). This covers the whole of the coastline of Cornwall and the Isles of Scilly. The first version was produced in 2011 and was updated in 2016².
13. The SMP identifies Donderry and Seaton as lying within Policy Development Zone PDZ1; and, within this, the site lies within Policy Unit 2.1 ‘Donderry East’. Amongst other things, the SMP sets out how the management of development in the CVZ would be approached through time; described as “epochs”.
14. The first epoch runs to 2025; as no end date is specified, I take this to be the end of 2025. During this epoch, the approach is described as ‘No Active Intervention’ (‘NAI’). This is defined in the 2016 version of the SMP as “a decision not to invest in providing or maintaining defences or natural coastline”. It then expands upon the terms of the NAI approach, and states that “the SMP has identified that privately funded works may still be permissible, however, there may be conditions associated with this such that private works do not result in negative impacts on other interests”. The NAI approach is proposed to continue into future epochs.
15. The SMP sets out that the most recent monitoring shows erosion rates of 300mm over 5 years, but that private defences have slowed this rate down. Both this and the Appellant’s CVA show that, without defences in place, the buildings on the site will inevitably be lost as the coast regresses.
16. The Council has produced a Climate Emergency Development Plan Document, March 2023 (‘DPD’). Its Policy CC1 relates to CVZs and, amongst its terms, it requires a CVA to accompany development proposals that is consistent with policy statements for the local policy unit in the SMP. Policy CC1 does not preclude private sea defences. These, it says, will only be permitted where they accord with one of three provisos, one of which, (a), is consistency with the SMP.
17. This policy approach accords with the Government’s National Planning Policy Framework (‘the Framework’) and its Planning Practice Guidance (‘PPG’).
18. In a submission for this appeal, the Council’s Flooding and Coastal Defence/Strategic Resilience Officer objected to the Appellant’s CVA. In this objection, the Officer states that private sea defences will only be permitted where they are consistent with proviso (a) *and* one or other of provisos (b) *or* (c) in Policy CC1. The words “and” and “or” that I have emphasised do not appear in the copy of the DPD submitted to me by the Council.
19. In the light of the evidence, I find that the above policy framework provides support in principle for the provision of private sea defences on the appeal site. Such

¹ John Grimes Partnership, 23 August 2023

² Cornwall and Isles of Scilly Shoreline Management Plan 2 – Mid Term Review: Royal Haskoning DHV

defences could render the development that has occurred at Yardley House safe for its design life. Without the defences, there would be an increase in vulnerable properties contrary to local and national policies.

20. I have no details of a sea defence scheme before me. In his Final Comments, the Appellant said that he intended to make a planning application for the installation of sea defences at the site. I have received nothing further in this regard from either party.
21. I have considered whether the provision of sea defences might be addressed through the use of a condition, requiring details of a scheme to be submitted for approval. However, I cannot be sure that such a scheme is possible, and I am aware of the comment in the Appellant's CVA that it is recommended that further assessment of the site is undertaken.
22. I understand the point made in the CVA that if Yardley House is not provided with sea defences, the sea would be likely to attack the unprotected flank of the property to its west. That might be the case, but, in the absence of a sea defence scheme, does not provide sufficient justification to allow the appeal.
23. Furthermore, DPD Policy CC1 requires the provision of information relating to biodiversity, safety, access and shoreline change. Presently, I cannot be confident that a scheme would meet all of those requirements.
24. Although this is an issue that I address later, I also note that Recommendation 2 of the CVA sets out that "Groundwater and surface water have the potential to significantly impact the stability of the cliff". This is another matter that I have no information on, and would need to be taken into account in an appropriate scheme.
25. Lastly, under the provisions of Schedule 2(m) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, development that would amount to "Coastal work to combat erosion" would require the submission of an environmental statement. It would be fundamentally wrong to circumvent the requirements of those Regulations by the use of a condition.
26. My finding on this main issue is that the policy framework supports the principle of a sea defence scheme on the property. The provision of an appropriate scheme would provide adequate protection for the occupants of the additional dwellings on the site. However, for the reasons set out, above, in the absence of an appropriate sea defence scheme that accords with the requirements set out in the policies I refer to, allowing the additional dwellings on the land would be contrary to the terms of CLP Policy 26, DPD Policy CC1, the terms of the SMP and those of the Government's Framework and PPG.

Flood Risk

27. Evidence from the Council's mapping system shows that the land at Yardley House is susceptible to both surface water and groundwater flooding.
28. At the site visit, I saw that a stream ran to a culvert on the opposite side of the B3247 from the appeal site. From there, it runs underground to discharge on the beach. The junction between the access to the site and the B3247 is raised; this, together with the road's slope and a road drain, would be likely to preclude much surface water on the road from entering the site.

29. In terms of surface water flooding, the Council's mapping system shows two linear areas that are likely to be affected: one running into the site from its access from the B3247; and the other running roughly northeast to southwest close to the site's western boundary. The former is shown to have a 1 in 100 year flood risk and the latter a mixture of 1 in 30 and 1 in 100 year risk.
30. The areas are shaded in a series of squares. They should not, therefore, be taken as being definitive but should be used as an indication that the site is susceptible to flooding and this is most likely in or around the areas shaded. For this reason, it cannot be taken as read that 3 of the residential units on the site have a low risk of flooding, with one having a higher risk, as claimed by the Appellant.
31. The Framework states that the creation of new residential units on areas that are at risk of flooding should be avoided. Further, as the Council agrees, it sets out that there would not be a need for a sequential test to be undertaken for this development. However, there is a need for a site-specific Flood Risk Assessment ('FRA'), to show that the development is acceptable in flood risk terms.
32. The requirements for a FRA are set out in guidance from the Environment Agency³. A FRA should be proportionate to the development that is proposed and appropriate to the scale, nature and location of the development, and, to my mind, the EA requirements are reasonable. No FRA of the form required in the EA guidance has been submitted.
33. From the evidence before me, I cannot be sure that occupants of Yardley House would not be at risk from surface water flooding.
34. The Council has submitted evidence from its mapping system that shows that the site lies in an area that is susceptible to flooding from groundwater. The Appellant illustrates that most of the county is similarly susceptible. However, he does not say that the mapping system is wrong.
35. He provides a quote from the EA that the risk of groundwater flooding on the site is "unlikely", though I was not provided with a copy of the EA flood map from which I am told the quote comes. My attention was also drawn to two applications⁴ that were approved by the Council in Donderry. The Appellant says these show the Council's approach to development to be inconsistent. However, as I have been given no details of those decisions, nor the reasons behind them, I cannot conclude that this is the case.
36. The 'Report Limitations' section of the CVA states that its comments relating to groundwater conditions/seepages are based on observations made at the time of the inspection. It goes on to say that groundwater conditions may vary as a result of seasonal or other effects. I read this as suggesting that further work is required on the matter.
37. From the evidence before me, I cannot be sure that occupants of Yardley House would not be at risk from surface water flooding.
38. My findings are that the site is susceptible to both surface water and groundwater flooding. Whilst the severity of this is unknown, in the absence of a suitable FRA, I find that it is necessary to take a precautionary approach and refuse to grant

³ Council Statement of Case – Appendix 10

⁴ Council's reference numbers: PA21/08658 and PA23/04302

planning permission as the development fails to accord with the terms of CLP Policy 26 and the Framework.

39. Both national and local planning policy dictate that development should only be allowed on the site where assessments demonstrate that the general rule of restricting development should be set aside. Such assessment has not been undertaken here. For this reason, even though it is a fairly small feature that might be put to a use ancillary to the use of Yardley House as a single dwelling, it would be inappropriate to allow the retention of the extension to the flat/garage through the use of a condition.

Other Matters

40. One of the reasons given for issuing the Notice related to the fact that the site lies close to the Plymouth Sound and Estuaries Special Area of Conservation ('SAC'). Given the adverse effect that certain types of development can have on the SAC, CLP Policy 22 sets out that, amongst other things, these effects can be mitigated through a financial contribution from developers.
41. The Appellant submitted a copy of an Undertaking he has made, under s111 of the Local Government Act 1972. In this, he undertakes to pay the Council £371 per additional dwelling to mitigate against any adverse effects of the development on the SAC.
42. Although the Council informed me that it had received the required payment, it did not go as far as to specifically say that this reason for issuing the Notice had been overcome. On the basis of the evidence before me, I take it that this is the case and will not, therefore, take the matter further.
43. The Appellant makes the case that weight should be given to the contribution that the development makes to the tourism economy. However, no evidence of this has been provided. Whilst I accept that some economic benefits would be likely to arise from the present use of Yardley House, this does not outweigh the significant harm that I have identified in respect of the main issues.
44. A number of third parties, including the Deviock Parish Council, the County Councillor for the area and the Downton and Seaton Residents' Association have raised objections to the development at Yardley House.
45. These cited: a lack of infrastructure in the village; the amount of holiday accommodation proposed, and the imbalance between holiday accommodation and that used for full-time residential purposes in the village; the lack of suitable parking on the site and highway safety issues; the harm to the character and appearance of the host building and wider area; harm to the living conditions of occupants of nearby buildings by reason of noise and disturbance; the precedent that would be set were the appeal allowed; Council Tax issues; and reference to *Moore v SSE & New Forest DC* [1998] JPL 877 that the change of use of full-time accommodation to holiday accommodation might amount to a material change of use. None of these issues were raised by the Council in its reasons for issuing the Notice, and, as I am dismissing the appeal, there is no need for me to take them further.
46. Comments were also made in respect of a lack of pre-application consultation with the Council, and that the Appellant undertook the work without planning

permission. There is nothing in the legislation that requires pre-application consultation to take place before developing land. It is not a crime to undertake development without planning permission; the legislation makes provision, as used here, for an application for planning permission to be made on a retrospective basis. As is the case here, all decisions on planning applications should be made on the basis set out in s38(6) of the Planning and Compensation Act, which is to say in accordance with the development plan unless material considerations indicate otherwise. Here, the development plan militates against the development and there are no material considerations that outweigh this.

Conclusion

47. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Curnow

INSPECTOR