



Appeal Decision

by **Grahame J Kean BA (Hons), Solicitor (HRA), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 August 2025

Appeal Ref: APP/D0840/C/23/3320430

Land Known as North East of Tregonetha, Tregonetha, St Columb Major, TR9 6EL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Jason Alford against an enforcement notice issued by Cornwall Council.
 - The notice was issued on 14 March 2023.
 - The breach of planning control as alleged in the notice is: without planning permission, the erection of a residential chalet and associated material change of use of the land from agricultural to residential and associated operational development. The land has been outlined red on the associated plan 'The Plan'.
 - The requirements of the notice are:
 - 1) Demolish and remove the chalet shown in the approximate position marked with a blue 'X' on attached plan.
 - 2) Remove all services connected to the chalet for the purposes of independent human habitation, i.e. electric cabling, solar panels, water pipes etc.
 - 3) Demolish and remove the covered porch area along the southern elevation of the chalet.
 - 4) Demolish and remove the wooden structure along the northern elevation of the chalet.
 - 5) Demolish and remove the outbuilding shown in the approximate position marked with a blue 'A' on attached plan.
 - 6) Remove from the land all materials and debris resulting from the residential use of the land, including washing line, plant pots etc.
 - 7) Remove all materials arising from compliance with (1) - (6) above from the land and restore the land to its former condition and use before the breaches took place.
 - The period for compliance with the requirements is: 18 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (e), (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal succeeds in part on grounds (d) and (f). It is directed that the enforcement notice is corrected and varied as follows:

-substitute the alleged breach of planning control with the following wording:

“without planning permission (1) the unauthorised material change of use of an existing building on the land to a chalet used for residential purposes; and (2) the material change of use of the land from agricultural use to a mixed use for agricultural and residential purposes and associated operational development, which land is outlined red on the attached plan.”

-substitute the requirements in the notice with the following wording:

“1) cease all residential use of the land (including the chalet and other structures); and

2) remove from the land all works, equipment and other domestic paraphernalia associated with the residential use of the land.”

2. Subject to the corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary matter

3. In light of the case presented by the appellant and the information submitted by both parties including the photographic evidence, it has not been necessary for me to conduct a site visit to determine this appeal.

Matters concerning the notice

4. The enforcement notice refers to the "land" in the allegation, ie the field in which the chalet and other structures have been erected. The appellant claims that the current use of the land is a mixed residential and agricultural use. The Council has not supplied final comments and on the evidence, including the photographs supplied and the appellant's undisputed statement in this regard, I agree. I have a duty to put the notice in good order and will correct the allegation accordingly.
5. The notice has two elements, it alleges operational development and a material change in the use of the land. As to the use, the requirements state that the land should be restored to its former condition and use before the breaches took place but there is no express requirement to cease the residential use of chalet or the land. The requirements should not be described differently from the corresponding allegation, not least to avoid a risk of unintended under enforcement. Therefore, I will correct the requirements to require the residential use of the land to cease.
6. However, it is clear from the appellant's statement and grounds of appeal, that as regards the chalet, he regards the building as having been converted in terms of its use, from a shed in which he kept tools and machinery associated with the agricultural use of the land, over time to a residential use. He stated in terms that he needed a structure to keep machinery and tools in, necessary to maintain the land and fruit trees. He then stated that "*a short while after the build was weathertight*" his financial situation meant that he had to move into the shed. Although not commented on by the Council, this indicates to me that, rather than a residential building being erected from the outset, the breach of planning control consisted in the change of use of a completed building to use as a single dwelling.
7. The Council states that the appellant has produced no documentary evidence whatsoever to support his claim. However, as the Planning Practice Guidance points out, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous. Each party's appeal statement was cross copied on 28 June 2023 and neither party made any final comments in reply. The appellant's statement is undisputed that he and his family gradually occupied the land residentially, at the same time using it to grow vegetables and plant fruit trees.
8. The precise timeline for this is difficult to establish, notwithstanding the several aerial photographs helpfully supplied by the Council. The Council says the location and form of the chalet structure has not changed since it was first constructed although many of the earlier images are of very poor definition and later images do show what appear to be elements added over time such as solar panels, flue, a roof light, and a wooden structure on the northern elevation.

9. Paying due attention to the photographic evidence as well as what the appellant himself has stated to be the case, I find it likely that the chalet's original form was a building used for purposes ancillary to the existing agricultural use of the appeal site before it changed to a primary residential use. Consequently, I will use my powers in s176 to correct the allegation of the breach of planning control.

Whether the chalet a movable structure

10. The appellant claims that the chalet is built on pads so it could be lifted and moved and is therefore a moveable structure. This would amount to a hidden ground (b) that the operational matters alleged have not occurred. However, considering the established criteria for distinguishing building operations from the change in use of land for the siting of structures thereon, in my view a building operation is involved. This is due to the size of the structure, the length of time, several years, during which it has been in one place on the land giving it a considerable air of permanence, and the degree of attachment to the land.
11. Although it may be largely resting on its own weight, there are electric cabling, solar panels, water pipes, the veranda to the south and wooden platform on its northern elevation. I doubt whether the whole structure could be easily moved without considerable work in detaching its various components. All in all, it is clearly a building and therefore operational development. Accordingly had a ground (b) appeal been made it would not have succeeded.

Ground (e)

12. An appeal on this ground is that the notice was not properly served on everyone with an interest in the land. The appellant states that the notice was not properly served as it was not physically handed to him but left at the premises and there is no confirmation that he received the notice.
13. Clearly, the appellant received the notice as he was able to lodge a timely appeal. By s329(1)(b) of the 1990 Act the notice can be served by leaving it at the usual or last known place of abode of the person to be served which is understood to be what the Council did. Accordingly, this ground of appeal cannot succeed.

Ground (d)

14. An appeal on this ground is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. The matters to be considered are, firstly, whether the operational development in the form of the originally completed building has gained immunity, and secondly, the residential use of the land including the chalet itself.
15. The only relevant planning history is that, under Ref PA13/00747, planning permission was applied for by the previous owner and granted on 2 March 2013, to erect a tractor shed in the same location as the chalet is now in situ.
16. The Council concluded, largely due to the aerial photography, that the "chalet" was constructed between 6 August 2014, when it is said the appellant took ownership of the appeal site, and 30 May 2016, the date of the aerial photograph which is the earliest that shows its location. Although that leaves a gap between August 2014 and May 2016, on the Council's own account a building would have been constructed by May 2016. The only earlier image available is the photograph of around March 2013 when the tractor shed permission was granted. It shows the

appeal site as a bare field, thus widening the gap during which construction of a building, whether or not built to the approved plans, could have commenced.

17. Also on the Council's own analysis, the roof was altered between May 2017 and June 2018, and a wooden structure on the northern elevation with solar panels built between June 2018 and June 2019. The veranda on the southern elevation was present according to the Council in an image dated June 2018, if not already identified as such in an image of May 2017 depicting a "*further roofed area on the southern elevation in the location of the present veranda.*" The roof covering was subsequently replaced from when it appears coloured red in a 2016 image and the May 2017 image, to when it is shown in the June 2018 image as grey in colour.
18. Any substantial completion of a building on the site would have been before 25 April 2024, therefore under the transitional legislation, operational development becomes immune from enforcement if no action is taken within 4 years of its substantial completion. The notice being issued in March 2023, the relevant four-year period began in March 2019. The Council does not offer a final conclusion as to when the chalet or any building on its footprint was completed, but states that the main structure and veranda of the chalet remains as first built, which places its construction in that form at the latest by June 2018. Taking the evidence as a whole, I find that it is more probable than not that the building was substantially completed more than 4 years before the notice was issued.
19. Therefore the appeal on ground (d) succeeds to the extent that the building is immune from enforcement action, being operational development where no enforcement action was taken within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024.
20. Turning to the residential use of the land, the Council focuses on what it sees as the relevant period of 10 years applicable to the use of a dwelling even where the building itself has gained immunity from enforcement action. I agree this would follow from applying s171B(3) but as the amended notice alleges a material change of use of a building to residential use, s171B(2) would instead apply, such that the relevant period to assess the use would be four years from March 2019.
21. That said however, the notice as amended also alleges a material change to a mixed use of the site. The Council did not grapple with this because it did not supply final comments on the appellant's statement or address the question of a mixed use. All mixed uses are sui generis uses which fall into the category of s171B(3), so the period of immunity of 10 years would apply to the wider use of the land. It is useful to consider what is/are the relevant planning unit or units. The domestic use of the wider plot is evident in the photographs but scattered around the chalet building and beyond, however there is no distinct curtilage for the dwelling and areas of the plot remain as an open field. Therefore, a mixed composite use of the site may be said to obtain, for agricultural and residential use. When it comes to the dwelling itself, only if the relevant period of continuous use is demonstrated, will it have formed a separate planning unit albeit with no curtilage, but the relevant period to examine for such purposes is still 4 years.
22. Dealing first with the building then, the Council acknowledges that the appellant does not state when the "works" on the dwelling were completed but stated that "*as time went by the shed did take a change to be more habitable*". He does claim

that “*the amended works on the dwelling were completed over 4 years ago and since, the dwelling had been occupied*”.

23. Where ground (d) is pleaded for any change of use of a building to a dwelling, the issues are the date of the breach or when the change of use took place, and whether there was continuous use. Of relevance is when the building provided viable facilities for living and when the use actually commenced. Actual use must be more than squatting or camping out. Intended use should be considered objectively and with regard to evidence including the whole chronology.
24. On this matter I agree with the Council that the appellant has produced no documentary evidence whatsoever to support his claim. For example, there are no invoices for works to evidence the building's function as a dwelling, no evidence of post sent to the appeal site or even a post box at the site. There are no statutory declarations attesting to the use of the property. The appellant's statements, given the lack of supporting evidence remain ambiguous as to whether the use was continuous or sporadic in nature, living in the chalet or visiting it for indeterminate periods, nor does it clarify the position regarding the address in Newquay which appears to be a residential address where he was served with the notice.
25. The Council's records contain no evidence of the property being registered for Council tax or of such tax being paid during the relevant period or at all. There may be no requirement in planning law for a property to be correctly registered for Council tax, however no plausible explanation has been given for the fact that the converted accommodation was never registered for Council tax during the relevant period. Registration would normally, and reasonably, be expected to flow from the creation of a new separate residential unit intended to be lived in continuously.
26. Undoubtedly there has been some residential use of the chalet building but the bare assertions made by the appellant do not amount to precise and unambiguous evidence. Furthermore, the absence of Council tax registration provides indirect evidence in conflict with the claim that the residential use has been continuous throughout the relevant period of four years prior to the issue of the notice.
27. A fact and degree judgement has to be made on the specific circumstances of the case, and looking at the information submitted, I am unpersuaded that building's use as a dwelling has become immune from enforcement action within the prescribed time limits under s171B(2). It follows that I would have arrived the same conclusion had I concluded that the dwelling was erected as such from the outset.
28. As to the wider use of the land for residential purposes, clearly the ten-year immunity period does apply, but the photograph taken in March 2013 showing the site as a bare field, means that any residential use must have commenced subsequently, and would not in reality have begun in any case until the appellant owned the land in 2014. Therefore, the appeal on this ground so far as concerns the residential use of the wider field, does not succeed.

Ground (f)

29. An appeal on ground (f) is that the requirements of the notice are excessive and lesser steps would overcome the objections. It is essential to understand the purpose of the notice. Under s173(4) of the Act, its purpose is to: (a) remedy the breach of planning control that has occurred, or (b) to remedy any injury to amenity which has been caused by the breach. Reading the enforcement notice as a whole

its purpose is to remedy the breach of planning control by requiring the residential use to cease and the chalet building to be removed together with all structures associated with the residential use of the land.

30. Electric cabling, solar panels, and water pipes can be used in buildings for purposes ancillary to agricultural use. These installations can support various farming activities and contribute to energy efficiency and sustainability on agricultural land. Whilst I cannot take account of the planning merits of the use of the land in a ground (f) appeal, the appellant has put forward reasons why what he terms the “shed”¹ should remain, ie because it acts as a base:

“from where we can perform ground maintenance ie digging out and clearing drainage channels which now flow and in doing so I have created a new home for dragonflies, newts and sloe worms, coppicing the hedges and trees...”

31. Elsewhere he refers to planting of trees, wild flowers and maintaining fruit trees. These activities are associated with agriculture as defined in s336(1) of the 1990 Act as including, among other things, horticulture, fruit growing, seed growing, the use of land as grazing land, meadow land, the use of land for woodlands where ancillary to the farming of land for other agricultural purposes, and so forth.
32. Provided residential use of the property ceases and all equipment and domestic paraphernalia associated with the residential use is removed, I consider it excessive to require removal of any additional component elements of the chalet building now in place that may have been added within the 4 years prior to the issue of the notice.
33. The Council has not commented at all on the outbuilding structure marked A on the plan attached to the notice. Whilst it may have been used for domestic related purposes, the notice as amended would no longer permit this but it would be excessive to require its removal given no reason is specified related in terms to it.
34. On a ground (f) appeal less onerous steps may suffice if they achieve the aims of the notice equally well. With no residential use of the land (including the chalet building), and all domestic paraphernalia removed the aims of the notice would be achieved and the lawfully extant building available for use by the appellant strictly in accordance with any agricultural use of the land within which it sits.
35. I cannot give guidance to the appellant as he seems to desire, as to whether future activity will be within the scope of the agricultural use of the land. The actual use in each case would need to be considered. For example, when he envisages using the chalet building as a base *“when I am needed for conservation work in the area usually one project each year re-roofing a church”*, such use as a workman’s day accommodation would not be incidental to the use of the field itself.
36. Moreover, it should be clear that using a building for overnight accommodation would be considered a material change of use requiring planning permission. Certain temporary uses may be permitted under Class B of Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). In each case it will be a matter for the local planning authority to assess, and the user of the land may always seek prior guidance.

¹ I take the above reference to be to be the chalet, not the outbuilding marked A on the plan attached to the enforcement notice, due to the way the appellant describes residential occupation of the “shed”, ie the chalet.

37. Furthermore, whilst the notice has not alleged a leisure use, it should be noted that the character and appearance of the land before the appellant assumed ownership appeared to be uncultivated countryside. Whilst agricultural activities on the land did not, and do not require permission, any use of the land as a leisure plot can often give the site such an untidy and quasi-domestic appearance that it becomes so substantially different to an existing lawful use of land that a material change in the character of the use of the land has taken place, requiring planning permission.
38. Accordingly, I will exercise powers to vary the notice to delete the requirement to remove the building and structures on the land. The appeal on ground (f) succeeds to this extent only.

Conclusion

39. For the reasons given above, I conclude that the appeal should succeed in part on ground (d) and ground (f). Otherwise, the appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out in the above Decision.

Grahame Kean

INSPECTOR