The Planning Inspectorate

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Helen Smith
Torridge District Council
Development Control
Riverbank House
Bideford
Devon
EX39 2QG

Your Ref: ENF/011/2022
Our Ref: APP/W1145/C/22/3309842
Further appeal references at foot of letter

18 August 2023

Dear Helen Smith,

Town and Country Planning Act 1990
Appeals by Wolf Meadows Farm Limited, Mr John Russell
Site Address: Land at Blackboards AKA Wolfs Meadows Farm, High Bickington, Umberleigh, Devon, EX37 9BE

I enclose a copy of our Inspector's decision on the above appeal(s).

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Yours sincerely,

Craig Maxwell
Craig Maxwell

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Linked cases: APP/W1145/C/22/3309843

The Planning Inspectorate

Appeal Decisions

Site visit made on 1 August 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2023

Appeal A Ref: APP/W1145/C/22/3309842
Land at Blackboards AKA Wolfs Meadows Farm, High Bickington, Umberleigh, Devon, EX37 9BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Wolf Meadows Farm Limited against an enforcement notice issued by Torridge District Council.
- The notice, numbered E/21/0080/UMOB, was issued on 26 September 2022.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years, the change of use of the land to a mixed use incorporating residential use comprising of the use of a Motor Home for human habitation identified on the Schedule attached to this notice as Appendix B.
- The requirement of the notice is to cease any residential use of the land and remove the motor home from the land identified in the schedule attached to the notice as Appendix B.
- The period for compliance with the requirement is one year.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) 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.

Appeal B Ref: APP/W1145/C/22/3309843
Land at Blackboards AKA Wolfs Meadows Farm, High Bickington, Umberleigh, Devon, EX37 9BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Russell (Wolf Meadows Farm Limited) against an enforcement notice issued by Torridge District Council.
- The notice, numbered E/21/0080/UMOB, was issued on 26 September 2022.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years, the change of use of the land to a mixed use incorporating residential use comprising of the use of a Motor Home for human habitation identified on the Schedule attached to this notice as Appendix B.
- The requirement of the notice is to cease any residential use of the land and remove the motor home from the land identified in the schedule attached to the notice as Appendix B.
- The period for compliance with the requirement is one year.
- The appeal is proceeding on the ground set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decision

1. It is directed that the enforcement notice is corrected and varied by

i) The deletion of the allegation and its replacement with "The material change of use of agricultural land to a mixed use for agriculture and for the stationing of a mobile home for human habitation."

ii) The deletion of Appendix B attached to the notice.

iii) The deletion of the requirement of the notice and its replacement with "Cease the use of the land outlined in red on the attached plan for the stationing of a mobile home for residential purposes and remove from the land the mobile home."

iv) The deletion of the compliance period of one year and its replacement with 18 months.

2. Subject to the corrections and variations the appeals are 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.

Preliminary Matters

3. At the site inspection it was evident that the motor home referred to in the allegation and sited to the northern part of the land had been removed. It had been replaced in December 2022 by a two bedroom mobile home situated in an elevated position towards the southern part of the land and which appears to be the same or similar location proposed for a mobile home in a planning application refused in August 2022 and referred to in the submitted Flood Risk Assessment (RAB Consultants 14/04/22 Version 1.0). As I have a duty to get the notice in order, I intend to correct the allegation to delete reference to the motor home and replace it with reference to the mobile home, together with other changes to the allegation and consequential changes to the requirement of the notice. As the notice refers to a change of use of land shown by a red line on the plan attached to the notice, the change in the location and type of residentially occupied unit does not materially affect the standing of the notice. I am satisfied that the corrections and variations will not cause injustice to the parties.

4. I therefore propose to correct and amend the notice as set out in the decision above.

The site and relevant planning history

5. The site is located in open countryside either side of the railway line which passes along an embankment and over two bridges linking both sides of the site. The River Taw curves around the eastern boundary of the site. Vehicular access is gained from the A377. The site is located in Flood Zones 2 and 3 and extends to about 11.8 ha of grassland and small areas of woodland.

6. To the west of the railway embankment is a track and numerous stored items including farm machinery, trailers, skips. Some 8 pigs were contained in an enclosure. To the east of the railway is a recently excavated large pond and three enclosures, one containing about 29 cattle, one was empty and the third was being prepared for no dig potato growing. A small chicken run contained about 17 hens. There are four glamping pods situated around the site together with two timber toilet huts and one camper's tent at the time of my visit.

7. In the southern part of the site and slightly elevated above the flood plain, is a mobile home with a double pitched roof and stove pipe, external domestic paraphernalia, a water container and septic tank. Timber structures are under construction, one of which is at an advanced stage and said to be for an office. There are a number of storage boxes, sheds and containers used for a variety of purposes including for the storage of frozen meat and for cultivating hydroponic plants. Two old agricultural buildings are located in proximity of the office under construction, one of which the appellants state will be used as a temporary calving building in the absence of a permanent agricultural building.

8. An application for the temporary change of use of land for the siting of a caravan to act as an agricultural worker's dwelling was refused in August 2022. (1/0408/2022/FUL). No appeal was made against the decision.

9. Application 1/0322/2022/AGR for an agricultural building for the housing of livestock was refused in May 2022. Application 1/0908/2022/AGR for the erection of agricultural building for storage of agricultural equipment, machinery and associated goods was refused in March 2023.

10. A response to a Planning Contravention Notice dated 20 February 2022 indicated that the motorhome had been in use on the site since February 2021 and that those residing on the land were John Russell-Murphy, Marcus Murphy and J'Mariah Russell.

11. The carrying out of operational or engineering development such as the creation of the pond, the erection of various structures on the site such as the office building, the toilet facilities for campers and the external domestic paraphernalia associated with the mobile home do not form part of the allegation as drafted, or as corrected.

The appeal on ground (a)

12. An appeal on this ground is that planning permission should be granted for what is alleged in the notice. The main issues are whether there is an essential functional need for a temporary resident worker; whether the occupants of the mobile home would be in danger at times of flood, and, whether the use of the existing access would be prejudicial to highway safety.

Essential need

13. Policy ST07 of the North Devon and Torridge Local Plan requires development in the countryside to be limited to what is needed to meet local economic and social needs, rural building re-use and development which is necessarily restricted to a countryside location. Policy DM28 regarding rural workers accommodation sets out the detailed requirements that need to be met and also indicates that where an enterprise is not well established, the provision of temporary accommodation will be considered for an initial period, normally for three years. The operational need for the temporary dwelling will have to be demonstrated and that the enterprise has been planned on a sound financial basis.

14. The appellants purchased the holding in January 2021 and have introduced a livestock enterprise comprising a suckler herd of pedigree Belted Galloway and Highland cattle along with pigs and poultry. The agriculture appraisal report by Reading Agricultural Consultants Ltd (dated November 2022) indicates that some 10.5ha of grassland and 7.68ha of agroforestry land located elsewhere

are available to the enterprise and that the appellants have entered 9.87ha of the appeal site into the DEFRA Sustainable Farming Incentive Agreement.

15. The appellant's appraisal concludes that there is an essential need for a temporary dwelling in view of the proposed increase in stock numbers over a three year period to a herd of 106 beasts. In order for the welfare of the stock not to be compromised a full-time worker needs to live on the unit. Additionally it is indicated that the developing enterprise will return a profit after three years sufficient to provide a notional charge for labour and return on capital invested. No other suitable residential accommodation has been identified.

16. The Council's appraisal, provided by LandSense, concludes that as the proposed level of stocking within the business plan is reliant on an agricultural building for which no permission exists, it cannot therefore be demonstrated that an essential need exists or that the business is sustainable. Accordingly the development does not accord with relevant policies.

17. It is evident that the expert advisors of the parties have reached different conclusions based on the business plan and the appraisal of an essential need for a resident worker for the enterprise. It is also apparent that the absence of an agricultural building is holding the enterprise back, albeit that the appellants have unsuccessfully attempted to resolve this. Although there is a stated intention to utilise a traditional agricultural building on the site, there is no evidence before me to suggest that this a realistic proposition in the near future. This indicates that the realisation of the business plan is ambitious in the circumstances.

18. On this basis it has not been demonstrated that an essential need exists for a temporary dwelling and that the stationing of a mobile home for human habitation fails to comply with Local Plan Policy DM28 or the Rural Workers SPD (January 2020).

Flood Risk

19. The appellants' statement of case refers to the motor home in its original location, referring to there being no Flood Zone 1 land suitable for the siting of a motorhome within 'site and sound' of the livestock. The statement is silent on the introduction of a mobile home on a different part of the site although the current location of the unauthorised mobile home appears to be that indicated in the refused application 1/0408/2022/FUL and also referred to in the appellants' submitted Flood Risk Assessment by RAB Consultants (14/04/22 Version 1.00).

20. This assessment concludes that the site is located in Flood Zone 2 and 3 according to the Environment Agency's flood map for planning. A simple 2D modelling exercise, proportionate to the scale of development, has been undertaken to assess the site-specific flood risk from the River Taw. No flooding is expected at the proposed location of the mobile home in a 1% Annual Exceedance Probability design flood event given the raised level of the site relative to the river and surrounding ground. The assessment states that risk to the mobile home will be managed by locating it on the upper level of the site, where the ground level is at least 1.2m above the design flood level. Risk to residents will be further managed by a flood warning and evacuation plan, with emphasis on early evacuation. Given the small-scale nature of the proposal and the remote rural setting, no impact on surface water runoff and

downstream receptors is expected. It is concluded that the proposed development is appropriate for the flood risk and is not expected to increase the flood risk elsewhere. The assessment recommends that the mobile home be set on the upper level of the site, on ground no lower than 27.85m AOD; the mobile home floor level be at least 300mm above local ground; residents must sign up for the Environment Agency's Flood Warning Service and a detailed Flood Warning and Evacuation plan produced, with early evacuation the priority.

21. The Environment Agency does not object to the mobile home with it being sited in Flood Zone 2 but indicate that flood risk should not be under-estimated. There is no safe access or egress to this site (which is in Flood Zone 3) during a flood event which would have a rapid onset with little warning or time for evacuation, particularly in the event of a flash flood.

22. I note the Council recognises its responsibility to undertake a sequential test of development in Flood Zones 2 and 3 in relation to flooding impacts, particularly in relation to access and egress from the site.

23. The appellants have not provided substantiated evidence which shows that the mobile home could not be located in Flood Zone 1.

24. The National Planning Policy Framework (the Framework) indicates that the aim of the sequential test to development is to steer development to areas with the lowest risk of flooding. Where it is not possible for development to be located in areas of lower risk, an exception test may need to be applied. Annex 3 of the Framework identifies caravans, mobile homes and park homes intended for permanent residential use to be in the 'highly vulnerable' category of development.

25. Paragraph 164 of the Framework indicates that for development to pass the exception test the development would provide wider sustainability benefits to the community that outweigh the flood risk; and the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.

26. Although the appellants' FRA indicates that the site of the mobile home is not expected to flood in the design event, access to the site could see depths of up to 1.5m which is associated with a hazard rating of 'Danger for All'.[1] The proposed evacuation route would involve travelling across the flood plain and passing under the railway line before travelling upwards towards the A377. This does not indicate that such an escape route would be safe in the event of a severe flood.

27. The absence of a safe escape route indicates that the site of the mobile home is inappropriate and is contrary to Local Plan Policies ST03 and DM04 and to relevant paragraphs of the Framework.

Highway safety

28. The highway authority is concerned about increased trip generation from the site and objects to the development. Egress for traffic emerging from the site onto the A377 is on a stretch subject to the national speed limit which is sub-standard with very poor visibility to the south due to the acute angle that the

[1] Paragraph 4.2.1 of the Flood Risk Assessment

private access track meets the main road which is aggravated by foliage and the adjacent fence.

29. The appellants' submitted traffic statement by Jubb (Transport Consultants November 2022) indicates that prior to living on the site, some 12 vehicle trips per day took place compared to 4 trips per day since living on the site. The appellants also refer to other planning applications for temporary agricultural workers dwellings where access was found to be acceptable, despite poor visibility. However the site in this appeal has a junction onto a Class A road, which by its very nature, is likely to carry more traffic. Notwithstanding this I am satisfied that the number of trips per day is reduced as a result of an agricultural worker living on site and that there is unlikely to be any adverse impact on highway safety.

30. I conclude on this issue that the highway impacts are such that the development should not be refused on highway grounds on the basis set out in Paragraph 111 of the Framework.

Overall conclusions on the ground (c) issues

31. Although the appellants clearly wish to progress with their farming enterprise, the absence of an agricultural building is an impediment in respect of justification of an essential need for a temporary dwelling for an agricultural worker. The absence of a safe escape route in the event of flooding also weighs against the development. These factors are not outweighed by my findings on highway safety. Planning conditions would not overcome the practical problems such as to make the development acceptable, even for a temporary period. The appeal on ground (c) fails.

The appeals on ground (g)

32. The compliance period is one year but the appellants considers that a period of 18 months is necessary in order not to completely jeopardise the farming enterprise. It is claimed that without a residential management presence it would not be possible to keep all the livestock on the holding and it would take time to find an alternative site. To sell the animals would represent a loss of pedigree breeding stock which forms a fundamental part of their business plans.

33. I note that the Council have consistently applied 12 months on similar enforcement notices but would accept a variation to 18 months.

34. Having had regard to the nature of the holding and the farming enterprise, I am satisfied that a compliance period of 18 months would be reasonable. I shall vary the notice accordingly. The appeal on ground (g) succeeds.

Conclusion

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

P N Jarratt

INSPECTOR

The Planning Inspectorate

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Helen Smith
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EX39 2QG

Your Ref: ENF/009/2022
Our Ref: APP/W1145/C/22/3308168
Further appeal references at foot of letter

14 August 2023

Dear Helen Smith,

Town and Country Planning Act 1990
Appeals by Ms Hayley Oakwood, Mr Mark Andrews
Site Address: Land at Winnie's Wood, Black Torrington, Beaworthy, AKA Wishtree Agroforest & Permaculture Centre, EX21 5JN

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

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Yours sincerely,

Craig Maxwell
Craig Maxwell

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Linked cases: APP/W1145/C/22/3308169

The Planning Inspectorate

Appeal Decisions

Site visit made on 18 July 2023

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal A Ref: APP/W1145/C/22/3308168
Appeal B Ref: APP/W1145/C/22/3308169

Land at Winnie's Wood, AKA Wishtree Agroforest & Permaculture Centre, Black Torrington, Beaworthy, Devon EX21 5JN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Ms Hayley Oakwood (**Appeal A**) and Mr Mark Andrews (**Appeal B**) against an enforcement notice issued by Torridge District Council.
- The notice was issued on 2 September 2022.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last 10 years, the change of use of the Land shown on the Plan (attached as Appendix A) to a residential use by virtue of the residential use of a caravan, identified in Annex B attached to this notice, for human habitation.
- The requirements of the notice are to:
  - (i) Cease any residential use of the Land identified in Appendix A
  - (ii) Remove all domestic paraphernalia associated with residential use from the land.
- The period for compliance with the requirements is twelve months.
- The appeals are proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the Notice is upheld with a correction in the terms set out in the Formal Decision below.

Application for costs

1. The Council applied for an award of costs against the Appellants. That application is the subject of a separate Decision Letter of even date.

Preliminary matters

2. The Appeal Site, outlined in red on the plan attached to the Enforcement Notice as Appendix A, is the entirety of the approximately five-acre area of planted and semi-natural woodland owned by the Appellants. It is common ground that the land has long been in use for agricultural activities (such as permaculture, horticulture, and agroforestry) and that this use has continued alongside the residential use. As the Appellants rightly point out, this means that there is now a mixed use of the land taking place, and this should be reflected in the wording of the alleged breach of planning control. I am satisfied that I can correct the notice accordingly, without causing injustice to either party: there is no dispute that the agricultural component of the mixed use is lawful, and will continue to be so whatever the outcome of these appeals.

3. The Appellants contend that the requirements of the Notice have already been complied with, on the basis that they now live in a timber cabin built on the

Appeal Site, and the caravan in which they were formerly living has been removed. It is important to be clear that while the Notice describes the change of use as having been brought about by the residential use of a caravan, it is NOT only the occupation of that caravan which is attacked by the Notice. The Notice clearly alleges the unauthorised residential use of the entirety of the Appeal Site, which includes the use (as distinct from the construction) of any buildings and structures it contains. The requirement to "cease any residential use of the land" has not been – and cannot be – met while the Appellants continue to live on the Appeal Site.

The appeals on ground (d)

4. The ground of appeal is that by the date on which the Notice was issued, the time limit available to the Council for taking enforcement action had expired. The time limit in this case is ten years, beginning with the date of the breach.[1] The Appellants' case is that they have been living on the Appeal Site since January 2021, having purchased the Appeal Site in December 2020 from the previous owners, Mr and Mrs Bagnall, who had themselves been living there since early 2011. They contend that since the unauthorised residential use began in 2011, and has continued unbroken since then, it is now immune from enforcement.

5. The Appellants have each provided sworn statements, as have local residents Ms Julie Smith and Mr David Evans, setting out their understanding of the previous use of the site. The Appellants say Mrs Bagnall showed them around the Appeal Site in September 2020, when she told them that she and her husband had lived there since 2011, initially in a van and then in a caravan and tent, and had paid residential Council Tax since around 2015/6. Ms Smith states that she first met Mr and Mrs Bagnall soon after they bought the Appeal Site in September 2011, that they bought a small caravan in early 2012 and that "I know with certainty they lived there on site." Mr Evans states that "To our knowledge [Mr and Mrs Bagnall] stayed at Wishtree in a van from Winter 2011 and lived at Wishtree in a caravan from Spring 2012".

6. The Council does not accept this version of events. It states that it investigated the Appeal Site in 2016, regarding an allegation of unauthorised residential use of a caravan at the site. At a visit on 26 September 2016 the Council's Officer spoke to Mr and Mrs Bagnall, who said that they had owned the land for five years; had commenced residential use in August 2015; and had paid Council tax for the residential use of the caravan since 1 August 2016.

7. A sworn statement carries considerable weight, and I have no reason to doubt that in each case, the signatory was providing evidence to the best of their ability. However, the assertions made in the statements by local residents are said to be based on "knowledge" for which no supporting or substantiating evidence is provided. The evidence contained in each of the Appellants' statement is largely hearsay; that is, their reported recollection of a conversation with Mrs Bagnall, at the time when they were considering purchasing the Appeal Site. Similarly, while I have no reason to doubt the probity or impartiality of the Council Officer who visited the site in September 2016, the evidence of what was established at that visit is again largely hearsay: a reported recollection of a conversation with Mr and Mrs Bagnall,

[1] S.171B(3) of the 1990 Act as amended.

with no supporting evidence such as a copy of contemporaneous notes made at that site visit.

8. No explanatory statement, or any other evidence, has been submitted by Mr or Mrs Bagnall in the course of these appeals. However, the Council has provided a copy of a letter from Mr and Mrs Bagnall dated 9 October, which it received following its visit to the site in September 2016. The letter begins "We consider that being present on site at all times, day and night is immensely beneficial to the smooth running of the business. However, we want to establish a good working relationship with the Council, and are therefore prepared to cease our residential occupation of Wishtree Wood."

9. In my judgment, this is persuasive evidence that Mr and Mrs Bagnall were, at the date of that letter, in residential occupation of the Appeal Site. As to the date on which that residential occupation began, the letter from Mr and Mrs Bagnall says this: "We feel there has been a misunderstanding as to the timeline of our being here – we moved to Devon in August 2015, but as discussed at the time of your visit, we have not been on-site for all this time, staying at a local B&B for several weeks over the winter, volunteering at other projects on and off, then spending the summer on-site to more intensively maintain our project, and deliver courses. We are unsure as to whether this means that we have been using the site residentially as suggested in your correspondence."

10. I agree with the Appellants that notwithstanding Mr and Mrs Bagnall's own uncertainty, the use they describe is likely to have amounted to residential occupation. The important point is that the letter makes it very clear they "moved to Devon" in August 2015, and that is when the use they describe began. This accords with the email provided by the Council from its "Revenues & Benefits" Department, which states "The mobile home… has been in Council Tax since 1 August 2015 and has been used as main residence since this date."

11. Taking all of this into account, I am not persuaded that there is sufficient substantive evidence to support the contention that Mr and Mrs Bagnall were living at the Appeal Site prior to August 2015. I appreciate that local residents genuinely believed they were, and I recognise that such a belief is likely to be founded on the amount of time that Mr and Mrs Bagnall spent at the Appeal Site. But it would not be unusual to spend a large amount of time (and frequently camp out) on site – particularly in the early years of setting up a permaculture enterprise - while residing elsewhere. The letter written by Mr and Mrs Bagnall to the Council in the autumn of 2016, which is the only direct evidence available from them, contains a very clear explanation that their residential occupation of the Appeal Site began, at the earliest, in August 2015.

12. I therefore conclude that, on the balance of probabilities, the unauthorised residential use of the Appeal Site commenced in August 2015. This means that the Enforcement Notice was issued within the ten-year period available to the Council for taking action against the breach of planning control. It follows that the appeal on ground (d) must fail.

Other matters

13. It is perhaps worth addressing here various points made about the status of the timber cabin constructed on the Appeal Site, which was not included in the description of the alleged breach of planning control. The effect of upholding

the Notice will be to prevent its use as a dwellinghouse, but the Notice does not (and could not, since it is not included in the description) require its removal. However, s.173(11) of the 1990 Act will not operate, as the Appellants contend, to mean that planning permission should be treated as granted for the cabin. Subsection (11) only applies to buildings, works or activities included in the description of the alleged breach of planning control in the Enforcement Notice: it does not operate to grant planning permission for other possible breaches of planning control, or for everything else remaining on site once the requirements of the Notice have been complied with.

14. I am mindful that a decision to uphold the Notice means that the Appellants and their children stand to lose their current place of residence. This would be an interference with their rights to respect for their private life and home, and in any such action, the best interests of the children must be a primary consideration.[2] The period specified for compliance with the requirements of the Notice is twelve months. The Appellants have not themselves sought to argue that this period falls short of what would reasonably be required, and I consider it a fair amount of time to look for alternative accommodation. I am satisfied that the requirements of the Enforcement Notice are proportionate when balanced against the need to uphold the planning system in the wider public interest.

Conclusion

15. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the Enforcement Notice.

Formal Decision

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

    At line 2 of section 3(i), deleting the phrase "to a residential use" and replacing it with the phrase "to a mixed use consisting of residential use and agricultural use".

    Subject to that correction, **Appeal A** and **Appeal B** are dismissed and the Enforcement Notice is upheld.

Jessica Graham

INSPECTOR

[2] Per Article 8 of the European Convention on Human Rights, set out in Schedule 1 of the Human Rights Act 1998.

The Planning Inspectorate

Costs Decision

Site visit made on 18 July 2023

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Costs application in relation to Appeal A Ref: APP/W1145/C/22/3308168 and Appeal B Ref: APP/W1145/C/22/3308169
Land at Winnie's Wood, Black Torrington, Beaworthy, AKA Wishtree Agroforest & Permaculture Centre, EX21 5JN

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Torridge District Council for a full award of costs against Ms Hayley Oakwood and Mr Mark Andrews.
- The appeal was against an enforcement notice alleging the unauthorised material change of use of the land to residential use.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The PPG provides non-exhaustive lists of examples of the types of behaviour which may give rise to an award of costs, one of which is "providing information that is shown to be manifestly inaccurate or untrue". The Council contends that it had evidence contrary to that submitted by the Appellants, which the Appellants failed to address, relying instead on the evidence contained in their own and others' signed Statements.

4. In my decision on the appeals, I conclude that there is insufficient substantive evidence to support the contention that the former owners of the Appeal Site were living there prior to August 2015. But that is not at all the same thing as concluding that the information provided by and on behalf of the Appellants was manifestly inaccurate or untrue. I have no reason to doubt that all of the evidence provided by the Appellants and their neighbours was given in good faith, and accurately represented their understanding of the circumstances. My decision was informed by testing the balance of probabilities, which requires the exercise of professional judgment as to the amount of weight that should be placed on each piece of evidence. I do not consider it unreasonable for the Appellants to have persisted in the view that their evidence, in the form of a number of signed Statements from different individuals, should outweigh the evidence provided by the Council.

5. The PPG's list of examples that might give rise to a procedural award of costs against an Appellant includes "introducing fresh and substantial evidence at a

late stage necessitating…extra expense for preparatory work that would not otherwise have arisen". The Council contends that new information in the Appellants' Revised Appeal Statement – in the form of assertions that the requirements of the Notice had been complied with, and the timber cabin constructed on site was in residential use and not subject to the requirements of the Notice – necessitated additional work in reviewing their own Statement.

6. The short answer to this point is that both of those assertions were first made at the earliest possible stage of the appeal process, in the original Appeal Statement submitted with the Appeal Form. Paragraph 10.2 of that Statement says "we would submit that the requirements of the enforcement notice have all, already, effectively been complied with in practical terms", and paragraph 2.7 says "building works have also been undertaken on the land and this operational development has been for residential purposes… not being required to be removed by the current notice, [it] would be subject of a deemed consent in any case, as would any use made of this operational development."

7. Further details and clarification of these assertions were provided in the Appellants' Revised Appeal Statement, received by the Planning Inspectorate on 28 November 2022, but there is nothing procedurally unreasonable in that: the Appellants complied with the timetable set by the Inspectorate's Case Officer to "By 30 November 2022: Please send me 2 copies of your statement if you need to add details to your appeal(s)." The Council then had (and took) the opportunity to provide comments on that revised Statement.

8. The Council also points out that the Appellants made a pre-application enquiry about a temporary rural worker's dwelling at the Appeal Site, in response to which the Council advised it was unlikely planning permission would be granted. As I understand it, the Council takes the view that the present enforcement action should therefore not have been necessary, and constitutes a waste of its time. However, the costs regime does not extend quite that far. There is a statutory right to appeal against an Enforcement Notice[1], and the costs regime exists to encourage all parties to behave reasonably *in the appeal process* (my emphasis).[2] The Appellants did not appeal on ground (a) (that is, that planning permission should be granted for the matters alleged in the Notice), so this is not a case where they could be criticised for proposing permission should be granted for development that conflicted with the Development Plan and the Council's earlier advice. Rather, the appeal was made solely on ground (d), and was supported by substantive evidence and reasoned argument. I can see no evidence of unreasonable behaviour by the Appellants during the appeal process.

Conclusion

9. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred. An award of costs is therefore not warranted.

Jessica Graham

INSPECTOR

[1] S.174 of the 1990 Act
[2] PPG paragraph 28

The Planning Inspectorate

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Your Ref: E/20/0004/UCU
Our Ref: APP/W1145/C/22/3309901

Helen Smith
Torridge District Council
Development Control
Riverbank House
Bideford
Devon
EX39 2QG

07 August 2023

Dear Helen Smith,

Town and Country Planning Act 1990
Appeal by Mr David Pearson
Site Address: land at Peters Marland, AKA The Yard, Torrington, Devon, EX38 8QH

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure.

If you do not have internet access you may write to the Customer Quality Unit at the address above. Alternatively, if you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

The Planning Inspectorate is not the administering body for High Court challenges and cannot change or revoke the outcome of an appeal decision. If you feel there are grounds for challenging the decision you may consider obtaining legal advice as only the High Court can quash the decision. If you would like more information on the strictly enforced deadlines and grounds for challenge, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our

service. It would be appreciated if you could take some time to complete this short survey, which should take no more than a few minutes complete:

https://www.surveymonkey.co.uk/r/Planning_inspectorate_customer_survey

Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Craig Maxwell
Craig Maxwell

https://www.gov.uk/government/publications/planning-inspectorate-privacy-notices

Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through GOV.UK. The address of the search page is - https://www.gov.uk/appeal-planning-inspectorate

The Planning Inspectorate

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 Notice[2] 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

The Planning Inspectorate

Costs 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

Costs application in relation to Appeal Ref: APP/W1145/C/22/3309901
Land at Peters Marland, AKA 'The Yard', Torrington, Devon, EX38 8QH

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Torridge District Council for a full award of costs against Mr David Pearson.
- The appeal was against an Enforcement Notice alleging the construction and use of a dwellinghouse on the land.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Government's Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The PPG explains that awards against Appellants may be either procedural (in regard to behaviour in relation to completing the appeal process) or substantive (relating to the planning merits of the appeal). Looking at procedural matters first, the Council contends that the Appellant behaved unreasonably in providing information in response to the 2018 Planning Contravention Notice (PCN) which contradicts the evidence he has relied on at appeal; in refusing to respond to the Council's requests for a site visit; and in failing to respond to the 2022 PCN.

4. The information provided by the Appellant in response to the 2018 PCN is clearly at odds with the information he has subsequently provided in the course of the appeal. If information produced at the appeal stage shows that the enforcement notice (and subsequent appeal) could have been avoided, had that information been produced earlier, then an award of costs would be justified. But in this case, for the reasons set out in my appeal decision, I have found that the unsupported contentions made at the appeal stage do not overturn, or outweigh, the information provided in response to the 2018 PCN. While it may well be unreasonable to make assertions at the appeal stage which conflict with information earlier provided in response to a PCN, such behaviour did not, in this case, cause the Council to incur any additional expense. The appeal was brought on a number of grounds, and the conflicting evidence about when the Appellant began living at the Appeal Site is only one component of his case on ground (d).

5. The Appellant's lack of response to the Council's repeated requests for a site visit, and his failure to respond to the 2022 PCN, fall squarely within the examples listed by the PPG as unreasonable behaviour which may give rise to a procedural award of costs.[1] However, these events took place during the Council's investigations prior to taking enforcement action, rather than during the course of the appeal. The PPG says that such behaviour can be taken into account in a costs application[2], but there still needs to be a causal link: unreasonable behaviour by one party must have *directly* caused another party to incur unnecessary or wasted expense *in the appeal process* [emphases added].[3]

6. In this case, the unreasonable behaviour of the Appellant during the Council's preliminary investigations did not have any bearing on the appeal process. Put another way, the circumstances of the case are such that had the Appellant complied with the Council's requests to visit the site and/or completed the PCN issued in 2022, these actions would not have prevented the issue of the Enforcement Notice, or altered the terms or process of the subsequent appeal.

7. Turning to substantive matters, the Council rightly points out that one of the PPG's examples of behaviour that may give rise to an award of costs is where development is clearly not in accordance with the Development Plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise.[4]

8. The Appellant's case on ground (a) (that is, that planning permission should be granted for the matters alleged in the enforcement notice) included an argument that the Appeal Site qualified as previously developed land, such that it would not constitute undeveloped land in the countryside, and its development would be supported by national planning policy in the form of the NPPF. For the reasons set out in my appeal decision I do not share that view. However, reaching a conclusion on the issues involved the exercise of planning judgment, for example in establishing the correct planning unit. This was not, then, a case where there was simply conflict with the Development Plan and no other material considerations to weigh in the balance. The Appellant advanced other material considerations which, depending on the attribution of weight, may potentially have been capable of overcoming conflict with the Development Plan.

Conclusion

9. For the reasons set out above, I find that unreasonable behaviour such as may give rise to a substantive award of costs has not been demonstrated. I find that the Appellant did behave unreasonably in procedural terms, but since this unreasonable behaviour did not result in unnecessary or wasted expense being incurred by the Council during the course of the appeal process, an award of costs is not justified.

Jessica Graham

INSPECTOR

[1] PPG paragraph 52
[2] PPG paragraph 32
[3] PPG paragraph 30
[4] PPG paragraph 53