The Planning Inspectorate

# Appeal Decision

Site visit made on 28 September 2020

**by Jessica Graham BA(Hons) PgDipL**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 November 2020**

## Appeal Ref: APP/X1118/C/20/3251065
## Manleighs, Kiln Lane, Combe Martin, Devon EX34 0LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr B L Lethaby against an enforcement notice issued by North Devon District Council.
- The enforcement notice was issued on 17 March 2020.

- The breach of planning control as alleged in the notice is:
  *Without planning permission and within the last 4 years unauthorised material change of use consisting of the subdivision of a single dwelling house into 3 separate residential flats and the conversion of a garage/workshop/store to create a new dwelling house. Without planning permission and within the last 4 years operational development consisting of engineering works to remove an earth bank, form a hard standing area & a track and the level the land.*

- The requirements of the notice are:
  1. *Cease the use of the flat known as Flat 2, Manleighs shown edged in blue on the attached location plan (Council tax reference 18029033712) as a separate unit of residential accommodation and reinstate Manleighs as a single dwelling house*
  2. *Remove from Flat 2 all kitchen units (fitted or free-standing), ovens/cookers, kitchen sink, taps, worktops, breakfast bar and kitchen appliances, including fridges, tumble dryers, washing machines, dish washers & cooker hoods*
  3. *Cease the use of the flat known as Flat 3 (or East Winds) shown edged in blue on the attached location plan (Council tax reference 18029033715) as a separate unit of residential accommodation and reinstate Manleighs as a single dwelling house*
  4. *Remove from Flat 3 all kitchen units (fitted or free-standing), ovens/cookers, kitchen sink, taps, worktops, breakfast bar and kitchen appliances, including fridges, tumble dryers, washing machines, dish washers & cooker hoods*
  5. *Cease the use of the building known as Manleigh Lodge shown green on the attached location plan as a separate unit of residential accommodation*
  6. *Remove from Manleigh Lodge all toilets, showers, baths, kitchen units (fitted or free-standing), ovens/cookers, sink, taps, worktops, breakfast bar and kitchen appliances, including fridges, tumble dryers, washing machines, dish washers & cooker hoods*
  7. *Restore the earth bank to its condition before the development took place and reseed with grass. The approximate position of the earth bank is shown hatched in blue on the attached location plan.*
  8. *Remove the hard standing, restore the land to its condition before the development took place and reseed with grass. The approximate position of the hard standing is shown hatched in red on the attached location plan.*
  9. *Reinstate the land to the north of the site to its condition before the development took place and reseed with grass, including the removal of the track linking the hardstanding area to the track to the north of the site. The approximate area is shown hatched purple on the attached location plan.*
  10. *Remove all debris and rubbish resulting from complying with steps 1 to 9.*

- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(b),(c),(d),(f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

**Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as corrected and varied is upheld as set out below in the Formal Decision.**

## Preliminary matter

1. The Council issued an earlier Enforcement Notice, on 13 June 2019, against the same alleged breach of planning control as is the subject of the current notice. The first notice was quashed on appeal[1] on the ground that one of its requirements was vague and ambiguous, and could not be amended without causing injustice.

## The terms of the Enforcement Notice

2. The current notice describes part of the alleged breach as the subdivision of "a single dwelling house" into "3 separate residential flats", but other documents submitted in the course of the appeal indicated that there are four separate residential units within the main building at Manleighs.

3. The parties have clarified[2] that the main building at Manleighs does currently provide four residential units. These are located in the top floor of the original building (known as Flat 1); the ground and first floor of the original building (known as Manleighs House); the ground floor of the extension to the original building (known as Flat 2); and the first floor of the extension to the original building (known as Flat 3 / East Winds). The Enforcement Notice requires that the separate residential use of Flat 2 and Flat 3 should cease, but not that of Flat 1 and Manleighs House. Where the Notice refers to "a single dwelling house" this is in fact a reference to all parts of the building with the exception of Flat 1. In other words, the Notice seeks the use of the combined floorspace of Manleighs House, Flat 2 and Flat 3 as a single residential unit, with Flat 1 on the top floor remaining, as currently, a separate residential unit.

4. In the light of this explanation, I am satisfied that the terms of the allegation are not misleading, but it would improve clarity to amend the wording so as to prevent any misconception that the reference to "a single dwelling house" is to the house in its entirety.

5. The requirement to "…reinstate Manleighs as a single dwelling house", which is included at both step 1 and step 3 of paragraph 6 of the notice, is in my view confusing, since the reference to "Manleighs" in that context can only be to the combined floorspace of Manleighs House, Flat 2 and Flat 3 (not the house as a whole) because the notice does not seek to prevent the separate use of Flat 1. But in any event, a requirement seeking the return of the relevant parts of the house to use as a single dwelling is excessive here: requiring the cessation of

[1] Ref: APP/X1118/C/19/3233186, decision dated 11 March 2020
[2] Initially at the site visit, and then subsequently in response to my written request for confirmation that my understanding was correct.

the unauthorised use is sufficient to achieve the intended purpose. Rather than attempt to re-word this aspect of the requirements, then, it will be appropriate just to delete both occurrences.

6. I am satisfied that these corrections would not cause injustice to the Appellant or the Council, but rather would better reflect their common understanding of the aims and requirements of the notice.

7. Another part of the breach of planning control alleged by the notice is "operational development consisting of engineering works to… form a hard standing area". Requirement 8 of the notice is to "Remove the hard standing… The approximate position of the hard standing is shown hatched in red on the attached location plan." In his Grounds of Appeal the Appellant pointed out that the eastern end of the area hatched red is an area of hard standing that has been in situ for well over four years, as evidenced by an aerial photograph from 2010. In response, the Council stated "The wording of the notice relates only to the unauthorised development, not that which pre-existed… and reinstatement would include removal of the extent of hardstanding which is new and clear difference which can be seen between aerial photographs and the photo provided by the LPA from the original permission for the garage."

8. In my view, the wording of the notice does not make this sufficiently clear; like the Appellant, I interpreted it to mean that the entirety of the hardstanding within the area shown hatched in red was the subject of the alleged breach, and that the requirement was to remove it all. However, it seems to me that this can be easily remedied by amending the terms of the notice to make it clear that it attacks only the new additional hardstanding. Again, this would not result in any injustice to either party.

**The appeal on ground (b)**

9. The ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The appeal on this ground relates to the alleged engineering works to remove an earth bank.

10. The Appellant's case is that there was not an earth bank in the majority of the area hatched blue on the plan attached to the enforcement notice. Rather, there was a retaining wall which existed prior to the erection of the building now known as The Lodge, and a barn/store building in the area between the main house at Manleighs and the site of The Lodge. The barn/store building has been removed, and the Appellant proposes to replace it with another of similar size. The Appellant contends that the retaining walls surrounding The Lodge had begun to fail, having been built on inadequate foundations, and were removed in order to be re-built, to the same height, on proper foundations. In order to facilitate this work, the earth immediately behind the position of the walls had to be excavated, with the intention of putting it back once the walls were rebuilt.

11. The Council contends that the extent of the works which have taken place go well beyond the area where the retaining wall would have stood.

12. In my judgment it is reasonably clear that the breach alleged by the notice is not the removal of an earth bank, in its entirety, from the area hatched blue but its removal, to varying degrees, in locations throughout that area. The

Council accepts that there was a pre-existing retaining wall within part of the area, and the notice simply requires that the earth bank be returned to its condition before the alleged development (that is, the unauthorised engineering works) took place.

13. Both parties have submitted photographic evidence in support of their respective cases, which includes aerial photographs, photographs of the site prior to the construction of the Lodge, and photographs looking across the valley towards Manleighs from Shute Lane. From these, and from what I saw at my site visit, it is clear that a significant area of the sloping land to the west of The Lodge – lying beyond the location of the former retaining wall, but within the area hatched blue on the enforcement notice plan – was removed. The Appellant's own evidence is that some of the earth (that is, part of the earth bank) behind the former retaining walls surrounding The Lodge was removed.

14. The extent of the works that have taken place in the area of land between the main dwelling and the eastern flank of The Lodge is less clear. Nevertheless, comparison of the current situation on site with the previous condition of the area as shown in the aerial photographs, indicates that at least some of the earth bank to the rear of the former barn/store building has been removed.

15. This leads me to conclude that works to remove an earth bank, to varying degrees, in the area hatched in blue on the enforcement notice plan, have as a matter of fact taken place. The appeal on ground (b) must therefore fail.

**The appeal on ground (c)**

16. The ground of appeal is that the matters alleged by the notice do not constitute a breach of planning control. The appeal on this ground relates to the engineering works carried out in connection with the removal of the earth bank, which involved the removal of an existing retaining wall and the construction of a new one.

17. The Appellant accepts that the creation of a retaining wall involves engineering operations and so amounts to development, which does not benefit from Permitted Development rights[3], but suggests that like-for-like replacement is more of a grey area, since the Planning Portal advises that planning permission will not be needed to take down, alter, maintain or improve an existing wall if its height is not increased.

18. The Planning Portal explains, within its guidance, that it is intended as an introductory guide and is not a definitive source of legal information. The passage referenced by the Appellant is part of a summary of the provisions of Class A, Part 2 of Schedule 2 to the GPDO. This Class of Permitted Development applies to "the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure." It does not, however, apply to walls (or gates or fences) which do not have a function of enclosure. In this particular case, the structure at issue is solely a retaining wall; it does not have any function of enclosure. Its replacement would not, therefore, constitute Permitted Development.

19. But in any event, the notice does not in fact allege that the construction of the replacement retaining wall is a breach of planning control, nor require its

[3] As set out in the *Town and Country Planning (General Permitted Development)(England) Order* 2015, as amended ("the GPDO").

removal. The breach attacked by the notice is the removal of the earth bank, and the requirement is that it be replaced. No argument is advanced by the Appellant that the removal of the earth bank did not constitute a breach of planning control. The appeal on ground (c) must fail.

**The appeal on ground (d)**

20. The ground of appeal is that by the time the notice was issued, it was too late to take enforcement action. The appeal on this ground concerns the use of the garage/workshop/store building (now known as "The Lodge") as a self-contained dwellinghouse.[4]

21. S.171(2) provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In order to succeed on this ground, the Appellant would need to demonstrate that on the balance of probabilities, the use of The Lodge as a separate self-contained residential unit took place for a period in excess of four years before the date on which the first enforcement notice was issued. In other words, the use must have begun by 13 June 2015, and continued without material change thereafter.

22. The evidence of the Appellant is that he purchased Manleighs and its grounds in March 2016. The property was previously owned by the late Mr Graham Osman, and various members of his family had flats in Manleighs. Mr Osman obtained planning permission for the building now known as The Lodge[5] in 2005, and construction was completed in September 2008. The ground floor was used by Mr Osman for his business, Stencil Warehouse Ltd.

23. The Appellant has provided a Statutory Declaration made by Richard Watkins, a local plumber. In his Declaration Mr Watkins states that he carried out plumbing work in 2008 and re-visited The Lodge in February 2009, by which time Mr Osman had moved all his machinery into the ground floor and had the business up and running, while the upstairs part was "all finished and being used by him as residential accommodation." Mr Watkins states his understanding was that Mr Osman intended to have The Lodge as a house "…once he had finished using it as a factory".

24. The Appellant has also provided an unsigned statement from Steve Ralph, the builder who was the main contractor for the construction and fitting of The Lodge. While this document carries less weight than a Statutory Declaration, I have no reason to doubt any of its contents. The statement explains that The Lodge was built to housing standards with double glazing and a mains sewer connection, as well as gas and electricity, and records that Mr Ralph "helped Graham move the machinery from flat two to the new factory". But it does not specify the date, or nature, of any residential occupation of The Lodge.

25. A Statutory Declaration has been provided by Yanic Osman. He explains that his Nan lived in Flat 1. He then makes reference to other family members living in other parts of the main building, but in the absence of a plan identifying the

[4] The appellant's case on this ground also included the area of hardstanding to the east of The Lodge, but in light of the Council's clarification of its position and the amendments I propose to make to the notice (per paragraphs 7 and 8 above) I do not need to address this further.

[5] Permission Ref 40120 for "Erection of Garage/Workshop/Store with recreation area over" was granted by the Council on 6 July 2005. The permission was subject to a number of conditions, one of which restricted the use of the building to purposes ancillary to the dwelling known as Manleigh.

areas to which he refers, it is not entirely clear how these relate to the present configuration of four residential units. Mr Osman's evidence is that "flat 4" was occupied by his brother (and his brother's family); "flat 3" was occupied by his eldest sister, and had a bathroom but no kitchen; and "flat 2" was used for his father's business, until it moved to The Lodge in around 2008. Mr Osman states that flats 1, 2 and 3 were linked to "the main house" with lockable doors, so unless "flat 4" and "the main house" were one and the same, it seems likely that the main house provided accommodation in addition to flats 1,2, 3 and 4. So far as The Lodge is concerned, Mr Osman's evidence is that "The living area upstairs was initially mainly used by my dad, then it was used on separate occasions by family members and friends, and then for the last 18 months it was used by myself as my main living accommodation."

26. The Council has provided an extract from its Council Tax records. This shows that prior to the Appellant's purchase of the property in 2016, flat 1 was occupied between 29 September 2002 and 18 February 2016 by "Ms A Osman sole occupant", and "Manleighs" was occupied between 20 November 2011 and 18 February 2016 by "Mrs C Osman 2 occupants". There are separate entries for Flat 2, Eastwinds (Flat 3) and The Lodge, but the occupancy details post-date the Appellant's acquisition. The Appellant's occupancy of The Lodge is recorded as "23.08.2018 ongoing".

27. Taking all of this available evidence into account, I can find no clear indication that The Lodge was used as a separate, self-contained dwelling during the period that Manleighs was owned by the Osman family. Mr Watkin's statutory declaration demonstrates that residential accommodation was provided on the upper floor of The Lodge by 2009. Mr Graham Osman, who owned both The Lodge and the main dwelling at Manleighs, was "using" that residential accommodation; but that may simply have been while he was there during business hours, and does not necessarily indicate that he was living there. Mr Watkins' understanding was that Mr Graham Osman intended to have The Lodge as a house "…once he had finished using it as a factory", but is clear that at the date of his visit in 2009, the business use of the building was ongoing.

28. Similarly, Mr Yanic Osman's statutory declaration that Mr Graham Osman "used" the living area in the upstairs part of The Lodge is not the same as a declaration that he "lived" there. In the absence of any further information, it is not possible to determine whether Mr Osman senior was in fact occupying The Lodge as an independent dwellinghouse, or whether he was staying there on an ad hoc basis, while continuing on other occasions to use the facilities of the main house. In my judgment, Mr Osman junior's reference to the living accommodation at The Lodge being "mainly" used by his dad, with subsequent use on separate occasions by other family members and friends, indicates that the latter scenario is the more likely.

29. Mr Yanic Osman used the upstairs living accommodation at The Lodge "for the last 18 months", which I take to be the period between August 2014 and February 2016, when the property was sold to the Appellant. His evidence is that he used it as his "main living accommodation", and that he "had use of the bathroom and the tea room / kitchen downstairs". The Council Tax records show that throughout this period, Mrs C Osman lived in the main part of the house at Manleighs and Ms A Osman occupied the top flat. It is unclear whether Mr Osman's siblings continued to occupy flats 3 and 4.

30. The Council's view is that Mr Yanic Osman's statutory declaration merely confirms that parts of Manleighs were used by family members and does not provide sufficient evidence of sub-division to independent dwellings. Of course, the fact that the sub-divided parts of the property were occupied by members of the same family does not necessarily preclude all or any of those parts from functioning as independent dwellings: there are plenty of examples of houses where outbuildings have been converted for residential occupation by a family member as a self-contained dwelling, with separately metered gas and electricity and separate Council Tax. However, there are also plenty of examples of houses where a family member may sleep, wash, and eat some meals in a separate flat or outbuilding, but continue to use some of the facilities (washing machines, for example) of the main house, and join their family there for some meals.

31. In this case, prior to the Appellant's purchase of Manleighs, The Lodge was not registered as a dwelling for Council Tax purposes and there is no indication that its gas and electricity supplies were billed separately to those of the main house. The evidence before me is sufficient to establish that both Mr Graham Osman and Mr Yanic Osman used the upstairs part of The Lodge as residential accommodation, but is not sufficiently precise and unambiguous to establish whether this use was independent from, or ancillary to, the use of the main house at Manleighs.

32. I can only conclude that there is insufficient evidence here to establish that, on the balance of probabilities, The Lodge was used as a separate, self-contained dwelling (as distinct from providing additional or ancillary living space for the Osman family and their visitors) on or before 13 June 2015. On that basis, the appeal on ground (d) must fail.

**The appeal on ground (a)**

33. The ground of appeal is that planning permission should be granted for the matters alleged in the notice.

*The subdivision of the main house at Manleighs*

34. As set out above, the main house at Manleighs is currently sub-divided into four residential units. The notice does not attack Flat 1, but requires that the use of Flats 2 and 3 as separate residential units should cease. This would result in there being two residential units within the main house: Flat 1, and a single dwelling consisting of the ground and first floors of the building. The deemed planning application under ground (a) seeks permission for the use of the ground and first floors as three separate residential units.

35. Manleighs lies outside the development boundary for Combe Martin in open countryside, where the development of new housing is generally restricted. However, as the Council notes, Paragraph 79 of the Government's *National Planning Policy Framework* ("the NPPF") sets out a number of exceptions to this general rule. These include circumstances where, as here, the development would involve the subdivision of an existing residential dwelling.

36. The Council's sole objection to the development in this case turns upon the impact it would have on highway safety. Kiln Lane, which provides access to the site, is narrow and has no footways. Both limbs of its junction with the A399 in Combe Martin are substandard in terms of visibility, and have a steep

gradient and narrow width. The Local Highway Authority has helpfully provided a statement explaining why it considers that these factors would result in a risk of additional danger to users of the A399 and interference with the free flow of traffic; excessive manoeuvring on the highway at the junction of Kiln Lane and the A399; and an increase in conflict between vehicular traffic and pedestrian traffic on Kiln Lane due to the absence of footway provision.

37. I agree with the Highway Authority's professional judgement of the deficiencies in the access provision. However, I note that its assessment of the development here proposed was made on the basis that "the existing authorised residential use of a single dwelling (albeit with multiple bedrooms) can be expected to generate between 6 no. – 8 no. vehicle movements per day. The alleged breach, amounting to the creation of 4 no. residential units… is likely to generate between 24 no. – 32 no. vehicle movements per day."

38. The Council does not seek to prevent the use of Flat 1 as a separate residential unit, so the "existing authorised residential use" of the main house is as two separate dwellings which, on the Highway Authority's estimate of 6-8 daily vehicle movements per single dwelling, would be likely to generate between 12 and 16 vehicle movements per day. It is also relevant to note, as the Appellant points out, that this "existing authorised use" could encompass the use of one of the two dwellings (the one formed from the ground and first floors of the main house) as a House in Multiple Occupation (HMO) for up to 6 people, without the need for any further grant of planning permission. The Council's reason for stating that "this fall back position does not exist" [6] is unclear, since it later states "Lawfully, where returned to a single dwelling, a 6 person HMO could be introduced without planning consent given the Use Classes Order clearly facilitates this".[7]

39. The undisputed evidence of the Appellant is that there are few single households requiring accommodation on the scale that would be created by the amalgamation of the three units on the ground and first floors of the house, so use of this part of the premises as an HMO for up to 6 people would be both realistic and likely. In my view, any fair comparison of the number of vehicle movements likely to be generated by the "existing authorised use" and the proposed development ought to take account of the fact that the former could legitimately encompass use as one flat and one HMO occupied by up to six people.

40. The Highway Authority has not (understandably, given the Council's position) provided figures for traffic generation by HMOs. But it is clear that the number of vehicle movements generated each day by up to six people living independent lives is likely to be much higher than the number generated by a single household. Indeed, it seems to me that there is no sound basis on which to assume that the number of vehicle movements generated by the use of the ground and first floors as a HMO for up to six people would necessarily be significantly lower than the number generated by the use of this space as three independent flats.

41. Taking all of this into account, I am not persuaded that permitting the proposed development would result in a situation where significantly more traffic would be generated than would be the case if the notice were upheld. On

[6] At paragraph 5.3 of its Planning Appeal Statement
[7] At paragraph 5.32 of its Planning Appeal Statement

that basis, I find that the proposal would not significantly worsen the existing risk of conflict between road users, and would accord with the overall aims of Policy DM05 of the North Devon and Torridge Local Plan 2011 - 2031. Paragraph 109 of the NPPF advises that Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. For the reasons given above, the evidence does not indicate that this development would have unacceptable or severe impacts on highway safety or the road network.

42. In summary, the use of the ground and first floor of the main house as three separate flats accords with Development Plan policy and national planning guidance, and there are no other material considerations which weigh against it. I therefore conclude that permission should be granted for this part of the unauthorised development.

*The conversion of the garage/workshop/store to a dwellinghouse*

43. Planning permission for "Erection of Garage/Workshop/Store with recreation area over" was granted in 6 July 2005, and construction of the building erected pursuant to this was completed in 2008. The deemed planning application under appeal (a) seeks permission for its use as a dwellinghouse.

44. As discussed above, Manleighs lies in the open countryside, where the development of new dwellings is generally restricted. The conversion of a garage/store building to a dwelling does not fall within any of the exceptions to this general rule listed at paragraph 79 of the NPPF. Nor would it fall within the exceptions envisaged by the North Devon and Torridge Local Plan, and so it would conflict with the Spatial Development Strategy set out in Local Plan Policy ST07.

45. On the basis of the figures provided by the Highway Authority, the use of the building as a dwelling would be likely to generate between six and eight additional vehicle movements per day: given the deficiencies of Kiln Lane and its junction with the A399, increasing the use of this access route would increase the risk of conflict between highway users, and so would be at odds with the aims of Local Plan Policy DM05. It is perhaps worth noting here that even if I were to accept the Appellant's argument that the increase in vehicle movements would be negligible, such that no conflict with Policy DM05 would arise, this would merely be a neutral impact: it would not weigh in favour of the development, or address the conflict with Policy ST07.

46. In summary, the use of the building known as "The Lodge" as a dwelling house conflicts with Development Plan policy and national planning guidance, and there are no other identified material considerations of sufficient weight to overcome this conflict. I therefore conclude that planning permission should not be granted for this part of the unauthorised development.

*Engineering works to remove an earth bank, form an area of hardstanding, and level the land*

47. The appeal on grounds (b) and (c) having failed, the deemed planning application under ground (a) seeks permission for the operational development that has taken place.

48. Manleighs lies within countryside that is designated as an Area of Outstanding Natural Beauty (AONB) and as "Heritage Coast". Paragraph 172 of the NPPF advises that great weight should be given to conserving landscape and scenic beauty in AONBS which, alongside National Parks and the Broads, have the highest status of protection in relation to these issues. Paragraph 173 advises that within areas defined as Heritage Coast, planning decisions should be consistent with the special character of the area. These aims are reflected in the requirements of Local Plan Policies ST14 and DM08A.

49. The engineering works undertaken by the Appellant have considerably altered the topography of the grounds at Manleighs. The grassed, sloping area to the north of the main house has been excavated, to varying degrees, to create an extensive flat area around the building known as The Lodge, and a large flat area of garden below it. This alteration to its setting increases the visual prominence of The Lodge, which appears as a separate dwelling in its own right, in addition to the existing sizeable house at Manleighs. This intensification of the domestic character and appearance of the site, which is clearly visible in views across the valley, is at odds with national and local planning policy aims to conserve the natural beauty of the landscape in AONBs.

50. The Appellant has pointed out that the topography of Combe Martin is such that many, if not most, gardens are terraced to some degree. However, Manleighs lies outside the settlement boundary, and in public views across the valley this part of its grassed, sloping grounds formerly appeared as a harmonious component in the rural landscape surrounding the town. In my judgment, the operational development that has taken place has harmed, rather than conserved, the natural landscape beauty and character of the area.

51. I note that in the context of the appeal on ground (f), the Appellant has suggested that landscaping works could be undertaken to soften the impact of the terracing. However, it is their location and extent that is problematic: the removal of earth behind, and the levelling of land in front and to the side, of The Lodge has harmfully intensified the domestic character of that building, while the levelling of the sizable area below (hatched purple on the plan) disrupts the characteristic slope of the land, one of the naturally occurring features of this part of the AONB. I am not persuaded that a condition requiring further landscaping work could overcome these concerns. Nor do I consider the natural slope of the land here to be such as would render it unusable for normal domestic recreation. It may be that the Appellant or a family member has a particular need for level areas of outdoor amenity space; if that is the case, it is open to him to submit a planning application for the operational development required to meet such needs.

52. For the reasons given above I find that the removal of the earth bank, the creation of the additional hard standing area around The Lodge, and the levelling of the land below, have harmed the character and appearance of this part of the AONB and I conclude that planning permission should not be granted for these aspects of the unauthorised development.

*Conclusion on the appeal on ground (a)*

53. The appeal on ground (a) fails in respect of the operational development and the use of The Lodge as a dwelling, but succeeds in respect of the subdivision of the house at Manleighs. I shall grant planning permission for that part of the deemed planning application, but shall refuse to grant planning permission for

the operational development and the use of The Lodge as a self-contained dwelling.

54. The Council has indicated that in the event that I were minded to grant planning permission for the use of Manleighs as four residential units, it would not consider it necessary to attach any conditions to that permission. I share that view.

55. Nor is it necessary for me to vary the requirements of the notice which relate to the use of the separate residential units within Manleighs, since s.180(1) of the 1990 Act provides that where, after the service of a notice, permission is granted for any development carried out beforehand, the notice shall cease to have effect so far as inconsistent with that permission. In other words, the requirements of the notice to cease the use of Flats 2 and 3 as separate units of residential accommodation and to remove the fixtures and fittings that facilitated that use (requirements no. 1, 2, 3 and 4) will be overridden by the grant of permission.

**The appeal on ground (f)**

56. The ground of appeal is that the requirements of the notice exceed what is necessary to remedy the breach or, as the case may be, the injury to amenity. In this case, it is clear from the terms of the notice that its purpose is to remedy the breach of planning control.

*The hard standing*

57. The first of the Appellant's points on this ground, as set out in his Grounds of Appeal, is that the removal of all parking areas from the property would be unreasonable and unnecessary. As discussed above, the Council has now clarified that it does not in fact seek the removal of the hard standing adjacent to The Lodge in its entirety, and I will correct the notice to make it clear that the pre-existing area is to remain. That resolves this concern.

*The levelled land*

58. The second point is that the levelled area of the grounds below The Lodge (shown hatched in purple on the plan attached to the notice) is garden land, so the requirement (no. 9) to return it to a sloping bank that cannot be used for normal domestic recreation is excessive. However where, as here, the purpose of the notice is to remedy the breach of planning control, and the breach consists of building or engineering operations, s173(4)(a) of the 1990 Act provides that this purpose is to be achieved by restoring the land to its condition before the breach took place. Requirement no. 9 does no more than that, and hence does not exceed what is necessary to remedy the breach of planning control. The Appellant's suggestion that works could be undertaken to soften the landscape impact of the terrace relates to remedying the injury to amenity, rather than the breach of planning control, so is not relevant to this appeal on ground (f) but I have taken it into account in my consideration of the appeal on ground (a).

*The subdivision of Manleighs*

59. The last of the arguments on this ground in the Grounds of Appeal concerns the requirements (nos. 2 and 4) to remove the fixtures and fittings which facilitated the use of Flats 2 and 3 as separate units of residential

accommodation. Since I have determined that the appeal on ground (a) should succeed in part, and permission should be granted for the use of those residential units, by virtue of s.180(1) of the 1990 Act that grant of planning permission will override these requirements of the notice and no further action need be taken by the Appellant in respect of them. I need not, therefore, consider this part of the appeal on ground (f) further.

*The Lodge*

60. The Appellant's comments on the Council's Statement of Case made two further points which, in my view, properly fall to be considered as part of the Appellant's case on ground (f).

61. The first concerns requirement no. 6, which is to remove *…all toilets, showers, baths, kitchen units (fitted or free-standing), ovens/cookers, sink, taps, worktops, breakfast bar and kitchen appliances, including fridges, tumble dryers, washing machines, dish washers & cooker hoods* from The Lodge. The Appellant contends that since features "such as the cloakroom and boiler" were originally considered acceptable for an ancillary building, being included in the approved plans, it is excessive to require their removal.

62. An enforcement notice directed at a material change of use may require the removal of works integral to, and solely for, the purpose of facilitating the unauthorised use. However, it is important to be clear that those works must have been integral to or part and parcel of the making of the material change of use. It will not be appropriate to require their removal if the works had been undertaken for a different and lawful use, and could be used for that other lawful use if the unauthorised use ceased.

63. In this case, the plans approved by the grant of planning permission for the "erection of garage / workshop / store with recreation area over (amended plans)" included a small cloakroom on the ground floor, containing a WC and a basin. There is no reason why these could not continue to be used in connection with the lawful ancillary use of the building. It would therefore be excessive to require the removal of this facility in the context of ceasing the subsequent unauthorised use of the premises, and I shall amend the notice accordingly. The Appellant's reference to a boiler is unclear, since the approved plans provided to me do not appear to indicate that the installation of a boiler was part of the grant of planning permission, but then neither does requirement no. 6 specifically require any boiler to be removed. On my interpretation, a small boiler installed for the sole purpose of providing hot water in the kitchen would constitute a "kitchen appliance" and so would be included in the list of items specified for removal, whereas a domestic boiler installed for the purposes of providing hot water and central heating throughout the building would not.

*The earth bank*

64. The second point is that a "replacement" retaining wall has been constructed by the Appellant, and to leave a grassed earth bank exposed would be dangerous. It is important to be clear that the notice does not specify the removal of this wall in its entirety: what it requires is that the earth bank be restored to its condition before the breach took place. So where earth has been removed from the area beyond the location of the former retaining wall, the requirement is to restore the former slope of the land and re-seed with grass.

65. The Appellant's evidence is that part of the earth bank behind the former retaining walls surrounding The Lodge was removed to facilitate the replacement of that failing wall. The information provided in the context of this appeal is not sufficient for me to reach any sound conclusion on whether, as the Appellant claims, the new wall in this area is simply a like-for-like replacement of the old: if it is, re-filling the earth behind it and re-seeding will meet the requirement to restore the bank to its former condition. If it is not, the Appellant will need to take other steps, but there is nothing in the requirement which would necessitate leaving a grassed earth bank exposed. As to the area of land between the main dwelling and the eastern flank of The Lodge, the Appellant contends that this was largely occupied by a former barn/store: if that is so, the requirement to restore the earth bank to its condition before the breach will be met by restoring the slope behind the site of the now-removed building to its former condition.

66. Taking all of this into account, I consider that while the steps needed to comply with requirement no. 7 may vary across the blue-hatched area, none of them are excessive.

*Conclusion on the appeal on ground (f)*

67. I have found that in connection with the requirement to cease the use of The Lodge as a separate unit of residential accommodation, the requirement to remove the ground-floor toilet and basin (both approved as part of the grant of planning permission for this building) is excessive and should be varied accordingly. The appeal on ground (f) succeeds to this limited extent.

**The appeal on ground (g)**

68. The ground of appeal is that the period of nine months for compliance with the requirements of the notice falls short of what should reasonably be allowed.

69. The Appellant's case on this ground relates only to the requirements to cease the use of Flats 2 and 3 as separate residential units and to remove the fixtures and fittings that facilitated that use. As set out above, I have determined that permission should be granted for the use of those residential units, and that grant of planning permission will override these disputed requirements of the notice such that no further action need be taken in respect of them. That being so, there is no further case to determine in respect of ground (g).

70. I am mindful that the Appellant and his family currently live in the building known as The Lodge. This means that upholding the notice in respect of the unauthorised conversion of that building to a dwelling house will result in the loss of their home. In circumstances where anyone stands to lose their home as the result of an appeal decision, as is the case here, there is likely to be a serious interference with their rights under Article 8 of the European Convention on Human Rights as enacted through the Human Rights Act 1998 (HRA). However, it does not necessarily follow that this would be a violation of their human rights.

71. Subject to the corrections and variations described above I am satisfied that the requirements of the notice are not excessive. I am also satisfied that the nine months given to comply with the requirement to cease the use of The Lodge as a dwelling house is adequate, and note that since no appeal has been made on ground (g) in respect of this, it is not disputed by the Appellant. In

terms of the HRA I find that the requirements of the enforcement notice are not a disproportionate remedy when balanced against the need to uphold the operation of the planning system, which includes the requirement for development to accord with the planning policies of the Council's adopted Development Plan; that being made and applied in the wider public interest.

**Overall Conclusion**

72. I conclude that the appeal succeeds in part on ground (a), insofar as planning permission should be granted for the subdivision of the ground and first floor of the house at Manleighs into three separate residential units, and also succeeds in part on ground (f), insofar as the requirements of the notice should be varied so as not to require the removal of the ground floor toilet and basin from The Lodge. In all other respects, the appeal fails.

**Formal Decision**

73. I direct that the enforcement notice be corrected and varied by:

- at the first part of paragraph 3, the deletion of the words "a single dwelling house" and their replacement with the words "the ground and first floors of the house at Manleighs";
- at the second part of paragraph 3, between the words "form…" and "…hard standing", the deletion of the word "a" and its replacement with the words "an additional";
- at the second part of paragraph 3, between the words "…track and" and "level the land", the deletion of the otiose word "the";
- at paragraph 6(1), the deletion of the words "and reinstate Manleighs as a single dwelling house";
- at paragraph 6(3), the deletion of the words "and reinstate Manleighs as a single dwelling house"; and
- at paragraph 6(8), the deletion of the words "the hard standing" and their replacement with the words "the new additional hard standing which extends beyond the area of hardstanding that was present in 2010";

And varied by:

- at paragraph 6(6), the deletion of the word "Remove" and its replacement with the words "With the exception of one toilet and one basin on the ground floor, remove".

74. I allow the appeal on ground (a) insofar as it relates to the sub-division of the house into self-contained flats, and I thereby grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act for the subdivision of the ground and first floors of the house at Manleighs into 3 separate residential flats at Manleighs, Kiln Lane, Combe Martin, Devon EX34 0LY.

75. I dismiss the appeal in respect of the remaining part of the development, uphold the enforcement notice as corrected and varied, and refuse planning permission on the application deemed to have been made under s.177(5) of the 1990 Act for the conversion of a garage / workshop / store to create a new

dwelling house, and engineering works to remove an earth bank, form an additional hard standing area & a track and level the land at Manleighs, Kiln Lane, Combe Martin, Devon EX34 0LY.

*Jessica Graham*

INSPECTOR