



Appeal Decisions

Site visit made on 28 November 2017

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 December 2017

Appeal A - APP/K1128/C/17/3179156 and

Appeal B - APP/K1128/C/17/3179157

Land at Hanger Farm Bungalow, Beadon Road, Salcombe, Devon, TQ8 8JT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr John Trefor Edwards and Appeal B is made by Mrs Susan Margaret Edwards against an enforcement notice issued by South Hams District Council.
 - The enforcement notice was issued on 24 May 2017.
 - The breach of planning control as alleged in the notice is the change of use of the building as a dwelling house without permission.
 - The requirements of the notice are:
 - 1 Cease residential occupation and or use of the building and its curtilage;
 - 2 Remove all domestic paraphernalia from the building and remove it from the land;
 - 3 Return the building to the use and state it was in prior to the unauthorised use taking place.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decisions: Appeals succeed on ground (a), notice quashed and planning permission granted.**
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The site and relevant planning history

1. The site is on the lower side of the un-metalled Beadon Road. It is accessed via a field gate and comprises a grassed parking area and a small single-storey, pitched roof, former agricultural building. The building contains a kitchen/sitting room, a small bedroom and a bathroom accessed via the lean-to entrance to the building.
2. The site is within the South Devon AONB and is adjacent to the Salcombe settlement boundary. It is on the side of a valley facing south-east and overlooks the bay. It is well screened from the road and is subject to a woodland TPO.
3. An application for the erection of a new farmhouse has been refused and an appeal dismissed (41/1621/99/F).
4. An application for a certificate of lawful use (LDC) as a dwelling house was refused in 2015 and an appeal dismissed in August 2016 (41/3102/14/CLE and APP/K1128/X/15/3133417).
5. An application for a LDC for existing use as Class C3 was refused in May 2017 (0684/17/CLE).

The appeal on ground (d)

6. An appeal on this ground is that at the time the enforcement notice was issued it was too late to take enforcement action.
7. In the 2016 LDC appeal decision, the inspector concluded on the balance of probability that in May 2003 the use of the agricultural building changed to a residential use. However he was not satisfied that the dwelling had been occupied continuously even though it had been available to be so and that the period of non-occupation was beyond what might be considered as *de minimis*. In reaching this view the inspector had regard to established case law¹ that for a use of land or buildings to become lawful by the passage of time the use must be substantially uninterrupted for the required time, which is four years, in this case. This is so that at any point during those four years it must be clear that the breach of planning control is taking place and that the Council can consider the expediency of enforcement action. Once the lawfulness of the unauthorised use has been established, further breaks in continuous use do not affect the lawfulness. However, until then, each material break in effect restarts the clock for establishing the requisite period.
8. The appellants submitted a further application for an LDC in 2017 with more details of periods of non-occupation of the property by explaining that these relate to normal domestic holidays but this application was refused. Although the Council relies on their officer report on this application for the purposes of this appeal, it appears from that report that information had been submitted by the appellant that does not form part of the appellants' evidence to this appeal, such as the appellants' interpretation of the key points of the inspector's decision of August 2016.
9. Rather than considering the dates of continuous occupation between 10 December 2010 and 10 December 2014 as submitted by the appellants, the Council has considered the period of 4 years starting before the date of the LDC application (0684/17/CLE), this being 3 March 2013. However this is an incorrect interpretation of Section 171B (2) which states 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". As the breach took place in May 2003, it is open to the appellants to show continuity of occupation for any four year period after that date. I will therefore consider the submitted evidence so far as it relates to the period of 10 December 2010 and 10 December 2014.
10. It is claimed that the property has been occupied continuously as the appellants' principal residence from May 2003 but evidence now submitted seeks to show continuous occupation for a four year period between 10 December 2010 and 10 December 2014 and that since that date the appellants say that they have similarly continuously resided in the property. In 2011 the absence was for 4 weeks and 4 days (ranging from 2 days to 15 days); in 2012 the absence was 2 weeks and 6 days (ranging from 3 days to 15 days); in 2013 it was 2 weeks and 6 days (5 days and 15 days) and in 2014, 3 weeks and 1 day (7 days and 15 days). The appellants state that these periods are no different to holiday absences of normal residential properties and can be distinguishable from *Swale*.

¹ *Swale BC v FSS and Lee* [2005] EWCA Civ 156

11. Notwithstanding this, from the Inspector's decision at paragraph 24, it appears that the appellants' explanation of low water usage was explained through their periods away. The Inspector noted that the absences did not amount to being away from November to February as stated by the Council but that it amounted to a period of at least two and a half months each year, which regarded as beyond the *de minimis* level.
12. Council Tax has also been paid since 2003 but the appellants have maintained a domestic Council Tax at Outset, Main Road, Salcombe from 1993 to May 2017 when the account was changed to another name. The Council advises that there has been no application to register Outset as a second home or to claim vacant billing discount. The appellants no longer have any interest in Outset.
13. The appellants have submitted an electricity statement from March 2012 to February 2017 which shows readings on 21 March 2012 and on 17 February 2017 with estimated readings for intervening times. The account² does not identify the property to which it relates. Furthermore, whilst the usage averages 1800 units per year, because of the estimated readings periodic variations in usage cannot be assessed. Water consumption is stated to be 10 cu m per annum but no documentary evidence to support this has been submitted. Whilst the appellant refers to the availability of credit card statements to show usage whilst away from the appeal premises such details have not been submitted although they would have been made available if required. It is a matter for the appellants to determine what evidence to submit and not for myself to request specific documents as the onus of proof rests with the appellants. In any event and as pointed out by the Council, had credit card statements been submitted they would not show evidence of occupation of the appeal property and would have been circumstantial at best.
14. A number of local residents have made representations disputing that the appeal property has been used as a dwelling. The building is secluded being at the lower side of the un-metalled lane with considerable tree and hedge growth and I would agree with the previous Inspector who concluded at paragraph 22 that "simply because local residents have not seen evidence of the appellants occupying the dwelling does not necessarily mean that they have not been doing so".
15. What is significant is that whilst there are a great number of matters raised by the Council in their report on application 0684/17/CLE rebutting aspects of the appellants' supporting evidence, the appellants have not provided any substantive evidence in this appeal to explain that the Council's conclusions are incorrect. In particular, the appellants have not evidenced any legal or other documentation that formally identifies Hanger Farm Bungalow as their place of residence, although the Council state that all documentation shows Outset as their address. No documentation has been submitted that Outset has been occupied by persons other than the appellants.
16. The onus of proof in an appeal on ground (d) rests with the appellants and the standard of proof is on the balance of probability. The only new evidence provided in this appeal which was not before the Inspector in 2016 appears to relate to a list of holiday dates between 10 December 2010 and 10 December 2014 and to an electricity account which does not identify the property or

² Appendix 5 of the appellants' evidence

provide periodic usage. Although the list of dates indicates when the appellants were on holiday, and that I would normally agree that absences of this frequency and duration do not represent anything unusual in the normal occupancy of a dwelling, there is nevertheless insufficient credible documentation to support their case to show on the balance of probability that the property was used as a dwelling for a continuous period of four years for the dates claimed.

17. The appeal on this ground fails.

The appeal on ground (a)

18. An appeal on this ground is that planning permission should be granted for what is alleged in the notice.

19. The main issues in respect of the ground (a) appeal are, firstly, the principle of residential development and, secondly, the effect that the development has on the character and appearance of the area.

20. The site lies in open countryside in the AONB adjacent to but outside the settlement boundary of Salcombe where the principle of development is resisted by national and local planning policies. The development does not satisfy any of the exceptions set out in paragraph 55 of the National Planning Policy Framework (the Framework).

21. The Council sets out a number of policy reasons to support the issuing of the enforcement notice relating to design and landscape character (CS7 and CS9 of the adopted LDF Core Strategy (2006) and DP1 and DP2 of the adopted development Policies DPD). Reference is also made to policies in the emerging Plymouth and SW Devon Joint Local Plan relating to countryside (TTV31), landscape character (DEV24 and DEV27) and undeveloped coast (DEV 27).

22. As the Council states, adopted policies regarding the location of housing development are out of date as they are based on housing supply up to 2016. Paragraph 14 of the Framework indicates that where this is the case, if the development is sustainable, permission should be granted unless the adverse impacts of doing so would outweigh the benefits or if specific policies of the Framework indicate that it should be restricted.

23. As the appeal site is adjacent to the Salcombe development boundary and Salcombe provides a wide range of services, I consider it to be sustainably located despite the likelihood that a car would be used to access some of these services. The development makes little economic contribution but provides the benefit of an additional dwelling. In respect of its landscape impact, paragraph 115 of the Framework places great weight to conserving landscape and scenic beauty but the development is not of a scale where paragraph 116 is relevant.

24. The Council is concerned that recent vegetation clearance has taken place opening up views of the site from North Sands and the SW Coast path, although I note that both are a considerable distance away and that the site is not particularly conspicuous in the landscape. Any concerns that the Council may have in respect of the effect that the clearance may have had on trees covered by the Woodland TPO is a matter that can be pursued separately to the enforcement action by the Council. I note that the appellants state that they are not responsible for the removal of any trees but that this was done by an adjoining owner.

25. Whilst the Council acknowledges that the building has been relatively inconspicuous in the past, there is concern that there would be pressure for extensions or for redevelopment in the future, changes in building materials and the introduction of domestic paraphernalia. This might be the case but a condition based on the Council's suggestion for the removal of permitted development rights would overcome much of the concern expressed.
26. The appellants' point out that what is proposed is the re-use of an existing building, that it is well screened and not prominent in the landscape and that other developments have been permitted closer to the coast.
27. I consider the circumstances of this case to be unusual. A building has been on site for 30 years and in May 2003, its use changed to residential. I do not consider that the use of the building as a dwelling house would cause any material harm to the character and appearance of the countryside, to the AONB, or to the protection of the undeveloped coast, subject to the withdrawal of certain permitted development rights. Although development plan policies resist development of a site in such a location, the building would remain after the requirements of the notice had been met. However and more importantly, having regard to paragraph 14 of the Framework and the age of policies for the supply of housing, I consider that the development is sustainable and that permission should be granted as there are no adverse impacts that outweigh the benefits.
28. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Conclusions

29. For the reasons given above I conclude that the appellants have not shown on the balance of probabilities that the appeals should succeed on ground (d). However the appeals should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Decisions

Appeal A - APP/K1128/C/17/3179156

Appeal B - APP/K1128/C/17/3179157

30. The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at Hanger Farm Bungalow, Beadon Road, Salcombe, Devon, TQ8 8JT, as shown on the plan attached to the notice, for the change of use of the building as a dwelling house subject to the following condition:
- 1) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development of the following classes of Schedule 2 shall be undertaken without the prior written approval of the Local Planning Authority:

- a) Part 1, Class A, extensions and alterations
- b) Part 1, Classes B and C, roof addition or alteration
- c) Part 1, Class D, porch
- d) Part 1, Class E, (a) swimming pools, etc and (b) containers etc
- e) Part 1, Class F, hard surfaces
- f) Part 1 Class G, chimney, flue or soil and vent pipe
- g) Part 14 Class A and B, installation of microgeneration equipment
- h) Part 2, Class A, means of enclosure

P N Jarratt

Inspector