The Planning Inspectorate

Appeal Decisions

Inquiry commenced on 18 June 2019

Site visit made on 1 August 2019

by C Sherratt DipURP MRTPI

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

Decision date: 18 December 2019

Appeal A - Ref: APP/P1560/C/17/3183309
Appeal B – Ref: APP/P1560/C/17/3183312
Land at 92 Saxon Way, Point Clear Bay, Clacton-on-Sea, Essex CO16 8LZ

- 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 Peter Evans (Appeal A) and Mrs Michelle Evans (Appeal B) against an enforcement notice issued by Tendring District Council.
- The enforcement notice, numbered 16/00368/BRCHC3, was issued on 1 August 2017.
- The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref TEN119/59 dated 7 May 1959 with amended plans approved on 5 November 1959 for construction of new chalets and Planning Permission TEN/119G/59 dated 23 March 1961 approving details of new chalets.
- The development to which the permission relates is construction of new chalets.
- The condition in question is No 2 which states that: The chalets shall be used for human habitation only during the period 1 March to 31 October in each year and during the winter months may be used for storage of household effects.
- The notice alleges that the condition has not been complied with by the habitation (occupation) of this chalet between the period of 1 November and 28 February (29 in leap years) each year otherwise than in compliance with condition 2 of the said planning permission TEN/119/59 and condition 2 of the said planning permission TEN/119G/59.
- The requirements of the notice are to:
  1. Comply with Condition 2 of planning permission TEN/119/59 dated 7 May 1959 and layout amended on 5 November 1959 by ceasing the habitation (occupation) of the chalet on the land between 1 November and 28 February (29 in leap years) each year.
  2. Comply with Condition 2 of Planning Permission TEN/119G/59 dated 23 March 1961 by ceasing the habitation (occupation) of the chalet on the land between 1 November and 28 February (29 February in leap years) each year. The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (d) 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 as amended have lapsed.

Procedural Matters

1. A number of appeals relating to several properties at Point Clear Bay were heard together at the above Inquiry. General evidence relating to flooding considerations and proximity to services and facilities, common to many

appeals containing ground (a), including this one, was heard during Week 1 and presented on behalf of a number of appellants by Mrs Kelly. There was an opportunity for any matters specific to individual appeals were heard throughout the remainder of the Inquiry. The appellant gave evidence on 16 July 2019.

2. Whilst no corrections are required to this Notice, it has been necessary to correct the period for compliance in relation to a number of the notices relating to other appeal properties. The Council's witness accepted that there should be a consistent compliance period across this group of appeals. Accordingly, I intend to vary the compliance period to 14 months to correspond with the longest period specified amongst this set of appeal notices.

Decisions

3. It is directed that the enforcement notice be varied by the deletion of the words "three months" and the substitution of the words "14 months" as the period for compliance. Subject to these corrections the appeals are allowed and the enforcement notice is quashed.

Reasons

Ground (d)

4. Ground (d) is pleaded on the basis that at the date when the notice was issued, no enforcement action could be taken in respect of the breach alleged in the notice; in other words, it was too late for the local planning authority to take action. The time limits for taking enforcement action are set out in Section 171B of the Act. In these appeals S171B(3) applies which states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

5. For the appeal on ground (d) to succeed the onus is upon the appellant to demonstrate, on the balance of probability, that the condition referred to in the enforcement notice has been breached for a continuous period of ten years or more prior to the date of the issue of the Enforcement Notice; in other words that the property has been occupied during the winter period for 10 consecutive years without compliance with the condition. The relevant date is on or before 1 August 2007.

6. After purchasing the property in June 2007, Mr Evans explained, under oath, that he and his wife occupied one room in the property while it was being renovated / re-built. No utilities were connected during these works until May 2008 at which time they were able to occupy the full extent of the property. Mr and Mrs Evans used all the facilities at Orchard Park where they both worked at the time. However, they retuned to sleep at the property each day after work. Notwithstanding that between June 2007 and May 2008 it appears that the property did not contain all the facilities for day-to-day living, this would be a breach of the relevant condition in that the property could still be said to be occupied.

7. The appellant's evidence is contradicted by the Council Tax records that show that an empty property discount was applied between June 2007 and 31 March 2010. The appellant explained to the Inquiry that his builder had advised they could apply for a discount while building works were being carried out which

they did until May 2008 when Mr Evans declared that he had informed the Council Tax department that they were now able to occupy the full property. He was not aware the discounts had not been lifted until 2010 until he saw the Council's evidence to this appeal.

8. A letter from the builder who carried out the renovation works supports the evidence given under oath, that the appellant's occupied one room during the works. The builder explains that a temporary toilet was provided in the garden, a new trussed roof was installed around Easter 2008 and the old roof removed internally. The entire contract was completed by the end of May 2008. A letter from Orchard Holiday Village also confirms that both appellants were employed at the holiday village on 1 June 2007, again consistent with the appellant's evidence.

9. The oral evidence whilst under oath was persuasive. It is supported by other evidence. Whilst it is contradicted by the Council Tax records, these alone do not verify the position on site. Accordingly, I am satisfied from the evidence before me that there has, on the balance of probability, been a breach of the relevant condition for a period of 10 years or more prior to the issue of the notice. It was therefore too late for the Council to take action against this alleged breach of planning control. The appeal on ground (d) therefore succeeds.

Conclusion

10. For the reasons given above I conclude that the appeals should succeed on grounds (d). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

C Sherratt

Inspector

APPEARANCES

FOR THE APPELLANT:
Mr Peter Evans

He called	
Mrs Mandy Kelly	General Planning Issues
Himself, Mr P Evans	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground QC	Instructed by the Council's solicitor
He called	
Ms Hanna Coogan	Technical Director in Flood Risk Management with Jeremy Benn Associates Limited
Mr Guy Cooper	For the Environment Agency
Mr Keith Hutchinson	Of Hutchinsons Planning and Development Consultants
Mr Chris Stathers	Enforcement Officer for Tendring District Council

Documents received at the Inquiry

Document A	Written Statement from the appellant.
Document B	Letter from Builder – Paul Hopkins.
Document C|	Letter from Orchards Holliday Village dated 22 March 2019.
Document 1	Appeal Notification - Copy of Site Notice.
Document 2	Opening Statement by Mrs M Kelly regarding flooding.
Document 3	EA Supplementary Maps 1 and 2.
Document 4	Extract from NPPG 'Flood risk and coastal change'.
Document 5	Judgement: Wisenfeld v Secretary of State for the Environment and another [1992] 1 PLR 32.
Document 6	Judgement: Michael William Howells v SoSCLG & Gloucestershire County Council [2009] EWHC 2757 (Admin).
Document 7	Decision Notice 16/00809/FUL – variation of seasonal occupancy period at Seawick Holiday Village.
Document 8	Extract from Strategic Housing Land Availability Assessment (May 2019).
Document 9	EA comments and Committee Report relating to planning application for replacement dwelling at 138 Colne Way
Document 10	Historic Planning Permissions.
Document 11	Legal Submissions on Breach of Condition Notice for Tendring DC.
Document 12	Legal Submissions from Mandy Kelly.
Document 13	Welwyn Hatfield BC v SSCLG & another [2011]UKSC 15
Document 14	Bonsall v SSCLG & another [2015]EWCA Civ 1246.
Document 15	Closing Submissions from Mr Everett.

Document 16	Closing Submissions from Mr Ground QC for the Council.
Document 17	Closing Submissions from Mandy Kelly