



Appeal Decision

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 Ref: APP/P1560/X/18/3207698

55 Colne Way, Point Clear Bay, St Osyth, CO16 8LL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Gwendoline Noble against the decision of Tendring District Council.
 - The application Ref 17/02000/LUEX, dated 20 November 2017, was refused by notice dated 30 January 2018.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is "C3 residential dwellinghouse – unrestricted occupation all year".
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Procedural Matters

1. A number of appeals relating to several properties at Point Clear Bay were heard together at the above Inquiry over a period of 14 days. There was an opportunity for any matters specific to individual appeals to be heard throughout the remainder of the Inquiry. Ms Wendy Gibbs, the appellant's daughter, gave evidence to the Inquiry in relation to this appeal. All evidence in relation to this appeal was given under oath.

Decision

2. The appeal is dismissed.

Reasons

3. Planning permission was granted (reference TEN/119/59) on 7 May 1959 for a revised layout for 133 chalets ('the 1959 permission'). This permission was implemented. Condition 2 states that the chalets shall be used for habitation only during the period 1 March to 31 October in each year and during the winter months may be used for the storage of household effects. The reason for the condition is that the site is not considered to be suitable for permanent all year-round living accommodation.
4. A subsequent appeal against a number of enforcement notices relating to some of the properties erected under the 1959 permission was determined on 3 July 1990 (the 1990 planning permission). This alleged a breach of condition 2 of the 1959 permission. In that appeal the Inspector allowed the appeal in so far as it related to this property (TEN/88/1406) and varied the condition to allow occupation of the chalet for residential purposes during the following periods:

- (i) at any time from 1 March to 31 October;
 - (ii) At weekends from noon on Friday until noon on Monday between 1 November in any year and the end of February in the following year.
 - (iii) During any period of 10 consecutive days which shall include both Christmas Day and New Year's Day.
5. The 1990 permission is a new and separate planning permission.
6. For the appeal to succeed the onus is on the appellant to demonstrate that the property has been occupied for residential purposes without complying with the condition restricting occupancy during the winter months, for a continuous period of 10 years or more, prior to the date of the application. The relevant date is therefore on or before 20 November 2007.
7. An enforcement notice exists, dated 8 November 2000, that alleges a breach of the condition restricting occupancy of the property during the winter months. I am aware that the appellant responded to that notice on 10 December 2000 explaining that no breach had occurred. Nevertheless, the enforcement notice was not withdrawn and thus remains in force.
8. Section 191(3) and 191(4) of the Act, make it clear that a use cannot be lawful if it is in breach of a Breach of Condition Notice or an Enforcement Notice. It therefore follows that even if the condition has been breached for a continuous period of 10 years or more prior to the date of the application, because the enforcement notice still remained in force on the date of the application for a certificate of lawfulness, the un-restricted occupation of the property cannot be found to be lawful.
9. A later 2018 enforcement notice was issued but this was not in force at the date of the application and so has no bearing on the lawfulness or otherwise of the breach on the date of the application.
10. I heard that a response to a Freedom of Information (FoI) request did not show the existence of the enforcement notices issued in 2000 or a Planning Contravention Notice in 2010, just the one in 2018 referred to above. Whether or not the FoI request should have highlighted those notices is not a matter for this appeal as the provisions set out in sections 191(3) and 191(4) of the Act would still apply.
11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "C3 residential dwellinghouse – unrestricted occupation all year" was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Claire Sherratt

Inspector

APPEARANCES

FOR THE APPELLANT:

Mrs Wendy Gibbs

She called

Herself, Mrs Wendy
Gibbs

Appellant's daughter

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground QC

He called

Instructed by the Council's solicitor

Mr Chris Stathers

Enforcement Officer for Tendring District Council

Documents received at the Inquiry

Document A	Written Statement from Mrs Wendy Gibbs
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