
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: 18th December 2019

Appeal Ref A: APP/P1560/C/17/3183145 &

Appeal Ref B: APP/P1560/C/173183146

Land at 32 Colne Way, Point Clear Bay, St Osyth, Essex, CO16 8LL

- 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 Mrs Kerry Slade (Appeal A) and Mr James Slade (Appeal B) against an enforcement notice issued by Tendring District Council.
- The enforcement notice, numbered 17/00015/BRCHC3, was issued on 1 August 2017.
- The breach of planning control alleged in the notice is failure to comply with condition 2 of a planning permission on appeal under Reference T/APP/P1560/A/92/197855/P4 for the retention of the chalet at 32 Colne Way, Point Clear Bay, St Osyth in accordance with planning permission TEN/119/59 dated 7 May 1959 for construction of new chalets as amended at appeal on 6 May 1992 to add a revised condition in place of condition 2.
- The development to which the permission relates is retention of the chalet. The condition in question is No 2 which states that:
The chalet may be occupied for residential purposes only 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 Years Day.
- The notice alleges that the condition has not been complied with by the occupation of this chalet between the period of 1 November and 28 February (29 February in leap years) each year otherwise than in compliance with the amended condition in paragraph 13 of the said planning permission on appeal modifying planning permission TEN/119/59.
- The requirements of the notice are to:
Occupy the chalet for residential purposes only 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 Years Day. The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended.
- Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications 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. There was an opportunity for any matters specific to individual appeals to be heard throughout the remainder of the

Inquiry. The appellants did not attend and so I have determined the appeal based on the written cases only.

2. Whilst no corrections are required to the period for compliance, 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 should the Notice be upheld.

Decisions

3. It is directed that the enforcement notice be varied by the deletion of 3 months and the substitution of 14 months as the period for compliance. Subject to this variation the appeals are dismissed and the enforcement notice is upheld.

Reasons

Ground (b)

4. For the appeal on ground (b) to succeed it is necessary to show that the breach of control alleged, i.e. the occupation of the property through the winter months in breach of relevant planning conditions, has not occurred as a matter of fact. The onus is upon the appellants to demonstrate this. However, the appellants do not dispute that the condition has been breached. Rather the appellants ask that various personal circumstances are taken into account in addition to matters that the appellants consider result in improved safety in relation to flooding matters. These are planning considerations applicable to an appeal on ground (a) 'that planning permission should be granted for what is alleged in the notice'. No such appeal has been made nor the appropriate fee paid to enable me to take these matters into account. The appeal made under ground (b) would therefore appear to be misconceived and fails.

Ground (g)

5. An appeal on ground (g) is that the period for compliance with the notice is too short. On the appeal form the appellants state that 28 days to comply with notice is not long enough due to various personal circumstances that I need not repeat in my decision. The appellants do not set out what longer period for compliance they consider would be reasonable. I note that the period for compliance specified in the notice is actually three months not 28 days.
6. For the reasons set out in my preliminary paragraphs, I intend to extend the period for compliance to 14 months. This is a proportionate response. The appeal therefore succeeds on ground (g).

Overall Conclusion

7. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

Claire Sherratt

Inspector

Documents received at the Inquiry

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.