The Planning Inspectorate

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/C/17/3183225
47 Colne Way, Point Clear Bay, Clacton-on-Sea, 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 Mr Alan Horn against an enforcement notice issued by Tendring District Council.
- The enforcement notice, numbered 16/00344/BRCHC3, was issued on 1 August 2017.
- The breach of planning control alleged in the notice is breaches of condition 2 of planning permission TEN/119/59 dated 7 May 1959 with amended layout on 5 November 1959 and condition 2 of planning permission TEN/119G/59 dated 23 March 1961.
- 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 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 February 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 with layout amended on 5 November 1959 by ceasing the habitation (occupation) of the chalet on the land between 1 November and 28 February (29 February 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.
- The appeal 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.

Preliminary 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 Inquiry. Neither the appellant or anyone representing him attended the Inquiry. As set out in correspondence to the parties I have proceeded on the basis of the written material only.

2. Whilst no corrections are required to this Enforcement 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 should the Notice be upheld.

Decision

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 appeal is dismissed and the enforcement notice is upheld.

Reasons

Ground (d)

4. 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; the relevant date is therefore on or before 1 August 2007.

6. The information to support the appeal is extremely limited. The appellant states in the grounds of appeal that he has owned the property since 2009. That may well be so but that is not to say that it has been occupied in breach of the condition every year since then. No documentary evidence to demonstrate continuous occupation during each winter period has been provided. No evidence is submitted that relates to the period between August 2007 and the appellant purchasing the property in 2009.

7. Furthermore, the Council Tax records provided by the Council are contradictory indicating that the property was claimed to be unoccupied between 1 April 2009 and 1 November 2013; thus for 3 consecutive winters.

8. The evidence before me is simply not sufficiently precise or unambiguous to demonstrate, on the balance of probability, a continuous breach of the condition.

9. The appeal on ground (d) must fail.

Claire Sherratt

Inspector