



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/17/3183539

Land at 63 Colne Way, Point Clear Bay, Clacton-on-Sea, CO16 8LN

- 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 Lodge House Limited against an enforcement notice issued by Tendring District Council.
- The enforcement notice, numbered 16/00353/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 granted on 7 May 1959 and planning permission TEN119G/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 1 November and 28 February (29 in leap years) each year otherwise than in compliance with condition 2 of the said planning permissions.
- 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) (g) 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. The appeal was originally lodged on grounds (a), (d) and (g). However, the appeal on ground (a) and the deemed planning application lapsed and the appeal on ground (d) was withdrawn.
2. 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 to be heard throughout the remainder of the Inquiry. The appellant did not attend instead relying on the written material submitted; no oral evidence was therefore heard on this particular appeal.

3. 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 should the Notice be upheld.

Reasons

Ground (g)

4. The appellant submits that three months is not sufficient to comply with the notice as two months notice must be given to end the assured shorthold tenancy agreement currently in place. The appellant asserts that if the tenants do not vacate then court proceedings will be needed after the two month period. A period of 6 months is requested.
5. Nevertheless, for the reasons set out in my preliminary paragraphs, I intend to extend the period for compliance to 14 months. This is longer than the 6 months sought. The appeal therefore succeeds on ground (g).
6. For the reasons given above I conclude that a reasonable period for compliance would be 14 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Decision

7. The appeal is allowed on ground (g), and 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 these variations the enforcement notice is upheld.

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