



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/17/3183228

67 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 Mr Charlie Horn against an enforcement notice issued by Tendring District Council.
 - The enforcement notice, numbered 16/00355/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 TEN/119/59 as amended on appeal on 3 July 1990 as set out in paragraph 22.9 of the Inspectors decision letter.
 - The development to which the permission relates is for construction of new chalets.
 - The condition in question 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 breach of the new condition to planning permission TEN/119/59 dated 7 May 1959 as amended at appeal on 3 July 1990 as set out in the Inspectors decision letter paragraph 22.9 by the occupation of this chalet between the period of 1 November and 28 February (20 February in a leap year) each year otherwise than in compliance with the amended condition of the said planning permission.
 - The requirements of the notice are to comply with the condition of Planning Permission TEN/119/59 dated 7 May 1959 as set out in the Inspectors appeal decision letter dated 3 July 1990 in paragraph 22.9 by ceasing the occupation of the chalet on the land between 1 November and 28 February (29 February in leap year) each year unless such occupation is during a period allowed by the said Condition during that period.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (f) 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 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.
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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. General evidence relating to flooding considerations and proximity to services and facilities, common to many appeals containing ground (a), 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. 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 (c)

4. For an appeal to succeed on this ground the onus is on the appellant to demonstrate that the failure to comply with the condition restricting occupancy during the winter months (except for weekends and 10 consecutive days including Christmas) is not a breach of planning control. No explanation is given why the breach of the condition is not a breach of planning control. Rather, the appellant points out that lots of people living in Point Clear Bay have full residency. That may well be so but it does not mean that there is no breach of planning control in relation to the appeal property. The appeal made under ground (c) fails.

Ground (d)

5. 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.
6. 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 (other than only on weekends from noon Friday to Monday and for 10 consecutive days including Christmas and New Year) for 10 consecutive years without compliance with the condition. The relevant date is on or before 1 August 2007.

7. The appellant explains in written correspondence that his nan lived in the appeal property from 1982 until she died in 2006. She passed the property on to her son, the appellant's uncle. He then passed it on to the appellant in 2016. The appellant suggests Council Tax has been paid in full since 1982, suggesting full residency. No documentary evidence is provided to show the property was occupied throughout the winter for 10 years or more. The appellant's recollection is also contradicted by the Council Tax records, provided by the Council. These show that a second home discount was applied to the property between April 1993 to 31 March 2015, i.e. prior to the appellant's inheritance of it.
8. To conclude, the appellant has not demonstrated, on the balance of probability, that the condition has been breached every year for a continuous period of 10 years or more prior to the issue of the notice. The appeal on ground (d) therefore fails.

Ground (f)

9. This ground of appeal is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
10. The purpose of the notice is clearly to remedy the breach as it requires full compliance with the relevant condition. It seems to me that this can only be achieved by ceasing the occupation of the property outside those times when occupation is permitted. No lesser or alternative steps have been suggested by the appellant that would achieve this purpose. The appeal on ground (f) fails.

Ground (g)

11. The period for compliance is 3 months. The appellant has not explained why this is too short or what longer period is sought. Nevertheless, for the reasons set out in my procedural paragraph, I shall vary the notice and extend the period for compliance to 14 months. The appeal on ground (g) succeeds to this extent.

Overall Conclusion

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

Claire Sherratt

Inspector