



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/18/3212679

Land at 117 Colne Way, Point Clear Bay, St Osyth, Clacton-on-Sea, Essex, CO16 8LW

- 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 John Thomas Phillips against an enforcement notice issued by Tendring District Council.
 - The enforcement notice, numbered 16/00379/BRCHC3, was issued on 5 October 2018.
 - The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref TEN/994/77 granted on 6 December 1977.
 - The development to which the permission relates is use of holiday chalet during winter months (November – February inclusive).
 - The condition in question is No 2 which states that: The permission hereby granted shall authorise occupation of the chalet only during the following periods:
 - (a) At weekends from noon on Friday until noon on Sunday between 1 November in any year and the end of February in the following year.
 - 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 1 November and the end of February in the following year otherwise than in compliance with condition 2 of the said planning permission TEN/994/77.
 - The requirements of the notice are to Comply with condition 2 of planning permission TEN/994/77 dated 6 December 1977 by ceasing occupation of the chalet on the land between 1 November in one year and the end of February in the following year during the periods outside those allowed by condition 2 of planning permission TEN/944/77 dated 6 December 1977.
 - The period for compliance with the requirements is 1 November 2019.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) 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), 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 were heard

throughout the remainder of the Inquiry. The appellant attended on 19 July 2019 to give evidence on ground (d). However, he subsequently confirmed at the Inquiry that he wished to withdraw the Inquiry.

2. The period for compliance stated in the notice gives a date rather than a period of time. However, it is possible to establish the time period between the notice taking effect on 5 October 2018 and the date for compliance on 1 November 2018. No prejudice would be caused to the main parties if I were to specify an equivalent period for compliance. The Council confirmed any corrected period for compliance could be rounded up to the nearest month.
3. It has also been necessary to correct the period for compliance in relation to other notices. 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 for compliance with the notices amongst this set of appeals.

Decision

4. 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 (f)

5. 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.
6. The purpose of the notice is clearly to remedy the breach as it requires 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 steps have been referred to by the appellant.
7. The appeal on ground (f) must therefore fail.

Overall conclusion

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

C Sherratt

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Phillips

He called

Himself, Mr Phillips Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground QC

Instructed by the Council's solicitor

He called:

Mr Keith Hutchinson

Of Hutchinsons Planning and Development
Consultants

Mr Chris Stathers

Enforcement Officer for Tendring District Council

Documents received at the Inquiry

Document A

Copy of planning permission reference:
TEN/994/77