



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: 18th December 2019

Appeal Ref: APP/P1560/C/18/3205680

Land at 28 Colne Way, Point Clear Bay, St Osyth, Clacton on Sea, 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 Kym Ketley against an enforcement notice issued by Tendring District Council.
 - The enforcement notice, numbered 10/0597/BRCHC3, was issued on 6 June 2018.
 - The breach of planning control alleged in the notice is failure to comply with condition No 2 of planning permission Refs 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 for new chalets. The conditions in question state that: The chalets shall be used for habitation only during the period 1st March to 31st October in each year and during the winter months may be used for storage of household effects. The notice alleges that the conditions have not been complied with by the habitation (occupation) of this chalet between the period of 1st November and 28th February (29th February in Leap years) each year otherwise than in compliance with condition 2 of the planning permissions referred to.
 - The requirements of the notice are:
 1. Comply with condition 2 of Planning Permission TEN/119/59 dated 7th May 1959 with layout amended on 5th November 1959 by ceasing the habitation (occupation) of the chalet on the land between 1st November and 28th February (29th February in leap years) each year.
 2. Comply with condition 2 of Planning Permission TEN/119G/59 dated 23rd March 1961 by ceasing the habitation (occupation) of the chalet on the land between 1st November and 28th February (29th February in leap years) each year.
 - The period for compliance with the requirements is 1 November 2018.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.
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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 gave evidence on 30 July 2019.

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 16 July 2018 and the time 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, should the notice be upheld.

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 allowed and the enforcement notice is quashed.

Reasons

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 for 10 consecutive years without compliance with the condition. The relevant date is on or before 6 June 2008.
7. In the case of a continuing requirement condition, such as the case here, discontinuance of the offending activity will bring an end to that particular breach. The clock starts again with any subsequent breach. The period of compliant activity needs to be significant and not de minimis, as a matter of fact and degree. The cessation of that breach means that the clock would start again for any fresh breach of the condition. The question to be asked during any period of compliant occupation is whether enforcement action could have been taken against a breach of the condition.
8. The appellant's documentary evidence comprises a 2006 bank statement with the address given as the appeal property and tenancy agreements dated from February 2013 to current day. The appellant refers to the bank statement as proof that her late husband had started living at the appeal property by 2006. It is stated that he lived there all year round until 2012, prior to renting it out to a tenant in 2013. This is supported by the Council Tax records provided by

the Council which show no periods when exemptions were sought for non-occupation during the winter months after 2005 and so well before the relevant date of 6 June 2008.

9. In response to a Planning Contravention Notice in December 2010 the appellant's late husband advised that the appeal property was his sole place of residence. Although he does not answer the question asking when he first occupied the property in breach of the condition directly, he infers that the Council were informed of a medical condition in 2005/6 to which the Council 'did not put up any objection, as had no other finances or able to get mortgage as ill'. There is no inference that the condition was not being breached at the date of the PCN response.
10. Accordingly, the evidence submitted does demonstrate, on the balance of probability, that the property has been occupied in breach of the relevant condition for a continuous period of 10 years or more. The appeal on ground (d) therefore succeeds and the notice will be quashed.
11. As the Enforcement Notice will be quashed, there is no alleged breach against which the deemed planning application and ground (a) can be assessed in this appeal. Accordingly, I am unable to proceed to determine whether planning permission should be granted in this case.

Conclusion

12. To conclude, the appeal on ground (d) therefore succeeds and the notice will be quashed.

C Sherratt

Inspector

APPEARANCES

FOR THE APPELLANT:

Mrs K Ketley

She called

Mrs Mandy Kelly

General Planning Issues

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground QC

He called

Ms Hanna Coogan

Mr Guy Cooper

Mr Keith Hutchinson

Mr Chris Stathers

Instructed by the Council's solicitor

Technical Director in Flood Risk Management
with Jeremy Benn Associates Limited

For the Environment Agency

Of Hutchinsons Planning and Development
Consultants

Enforcement Officer for Tendring District Council

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

